

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 21, 1999

+ + + + +

The Public Hearing convened in Room 220, 441 Fourth Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
BETTY KING	Vice Chair
JOHN PARSONS	Zoning Commission

STAFF PRESENT:

SHERI PRUITT	Director
PAUL HART	Staff
JOHN NYARKU	Staff
BEVERLY BAILEY	Staff
ALAN BERGSTEIN	OCC

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STEVE SHER, Esq.
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Suite 1100
1666 K Street, N.W.
Washington, D.C. 20006-2897

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ALISON PRINCE, Esq.
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1666 K Street, N.W.
Washington, D.C. 20006-2897

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JAMES A. MERKLINGER, Esq.
1025 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20036-5425

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PATRICK BROWN, Esq.

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Washington, D.C. 20036

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SUSAN COOK, ESQ.
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(202) 637-5600

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PATRICK BROWN, Esq.
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(9:35 a.m.)

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CHAIRPERSON REID: Good morning. The hearing will please come to order. This is the July 21 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today are Betty King and representing the Zoning Commission is Mr. Parsons. Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exception and variance cases will proceed as follows: the statement and witnesses of the applicant; government reports including Office of Planning, Department of Public Works, ANC, et cetera; persons and parties in support; persons and parties in opposition; closing remarks by the application.

The order of procedure for appeal of applications will be as follows: statement and witnesses of the applicant; the zoning administrator

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1 or other government official; the owner, lessee or
2 operator of the property involved, if not, the
3 appellant; the ANC within which the property is
4 located; the intervener's case; rebuttal and closing
5 remarks by the applicant.

6 Cross examination of witnesses is
7 permitted for persons or parties with a direct
8 interest in the case. The record will be closed at
9 the conclusion of each case except for any material
10 specifically requested by the Board, and the staff
11 will specify at the end of the hearing exactly what
12 is expected.

13 The decision of the Board in these
14 contested cases must be based exclusively on the
15 public record. To avoid any appearance of the
16 contrary, the Board requests that persons please not
17 engage the members of the Board in conversation.
18 Please turn off any beepers and all phones at this
19 time so as not to disrupt these proceedings.

20 At this time, the Board will sit any
21 preliminary matters. Preliminary matters are those
22 which relate to whether a case will or should be
23 heard today, such as requests for postponement,
24 continuance or withdrawal, or whether proper and
25 adequate notice of the hearing has been given. If
26 you are not prepared to go forward with the case

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1 today or if you believe that the Board should not
2 proceed, now is the time to raise such a matter.
3 Are there any preliminary matters? Please come
4 forward.

5 MS. PRINCE: Alison Prince, here today
6 on behalf of Tudor Place, Application No. -- it is a
7 modification of Application No. 15774. We filed a
8 request for postponement on June 1. It is my
9 understanding from the staff that we will be
10 rescheduled until October, but I was asked to appear
11 today. The reason for the postponement was to
12 provide ample opportunity to work with the
13 community. The community is strongly opposed to our
14 proceeding forward today and we are not prepared to
15 go forward today, but we are prepared to go forward
16 in October.

17 CHAIRPERSON REID: Okay.

18 MS. KING: I have no problem. That is
19 fine.

20 CHAIRPERSON REID: Yes. I think the ANC
21 wanted to have time to meet and to vote on the
22 application.

23 MS. PRINCE: That is right.

24 CHAIRPERSON REID: I have no problem
25 with it. Mr. Parsons? Do you wish to schedule a
26 date certain at this time?

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1 MS. PRINCE: I had tentatively discussed
2 a date in early October with Mr. Hart of your staff.
3 I'd like that confirmed so that I can share that
4 with the ANC.

5 CHAIRPERSON REID: Okay.

6 MS. PRUITT: We can reschedule it for
7 October 6.

8 MS. PRINCE: Thank you.

9 CHAIRPERSON REID: Thank you very much.

10 MR. MONTGOMERY: My name is Jim
11 Montgomery, and I am here on the case that was
12 originally scheduled for this date, that is Minor
13 Krause, 16443. I wrote a letter stating that I had
14 called on Monday. Mr. Aguglia from Hunt and
15 Williams was supposed to be here also. Should I
16 wait until he gets here?

17 CHAIRPERSON REID: Who?

18 MS. PRUITT: Mr. Aguglia is actually --
19 Mr. Krause is the applicant and Mr. Aguglia is the
20 person in opposition. The applicant is requesting
21 the postponement and it is not necessary that Mr.
22 Aguglia
23 -- he is aware of it.

24 MR. MONTGOMERY: Okay, he is not an
25 applicant. I just wanted --

26 CHAIRPERSON REID: What is your case

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1 number, sir?

2 MR. MONTGOMERY: 16443.

3 MS. PRUITT: It is a case that has been
4 rescheduled and it was tentatively put at the end of
5 the agenda. You have a package.

6 MS. KING: I don't have one.

7 MS. PRUITT: You had -- that package was
8 already given to you. It should have been along
9 with -- staff should have indicated that you should
10 have brought it, but we did not, and we apologize.

11 MS. KING: I received nothing about it.
12 I don't even know what you are talking about.

13 CHAIRPERSON REID: Okay. What does the
14 case involve, do you know?

15 MR. MONTGOMERY: It involves the
16 extension of parking -- a variance to extend the --
17 the parking has been extended and this goes back
18 over six years, and we are seeking a variance to
19 make the extension legal.

20 CHAIRPERSON REID: All right.

21 MS. PRUITT: And they are requesting a
22 postponement because they are not ready to go
23 forward.

24 CHAIRPERSON REID: Okay. But I don't
25 see this on the agenda anywhere.

26 MS. PRUITT: This was a case that we

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1 talked about earlier that you heard -- it started
2 already and then they asked for a postponement and
3 continuing another postponement.

4 MS. KING: Madam Chair, I would ask the
5 staff if things are not published on the agenda and
6 if they are going to come before us, that they would
7 at least have the courtesy to let us know so that we
8 can bring the appropriate files or understand why we
9 have files that do not appear on the agenda. But
10 also it seems to me that even though it may not be
11 legally required, that if there is time to publish
12 additions to our agenda, even if they are
13 postponements, to publish them again for public
14 notice that it would not be harmful. But at the very
15 least, you and I and the other members should be
16 informed of what is going to be coming before us on
17 any day of any meeting.

18 CHAIRPERSON REID: Absolutely. I
19 thought we indicated earlier, staff, that we would
20 really like to see any items that we are going to be
21 taking up at the hearings reflected on the agenda,
22 not only for our purposes but also for anyone who
23 happens to come to the hearing room who may want to
24 sit for or to elicit any subsequent hearings that
25 they would be so advised.

26 MS. KING: I agree entirely.

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1 CHAIRPERSON REID: So I hope that we
2 will have that accommodation, Ms. Pruitt-Williams.
3 Thank you. Now, for the matter that you are
4 referring to, for your case I don't have any problem
5 with it. It has been postponed once already?

6 MR. MONTGOMERY: Yes.

7 CHAIRPERSON REID: And the reason why
8 you are asking for an additional postponement is for
9 what -- repeat it again?

10 MR. MONTGOMERY: Well, on Monday it was
11 not scheduled. I called up and it was not scheduled
12 for today. Another aspect of this, I have here --
13 and this has been filed with you -- this is a
14 decision and order of the DCRA, the Office of
15 Adjudication, which is pertinent to this case and we
16 are appealing to the Board of Zoning Adjustments. I
17 would like to have -- I wrote a letter requesting
18 that this appeal be consolidated with this case as
19 it covers the same factors, the same properties, and
20 there is a lot of background in here on the issues.

21 CHAIRPERSON REID: Okay. So the basis
22 is because of lack of notification or preparedness.

23 MS. PRUITT: Madam Chair, let me clear
24 up. This case was -- this case was already heard
25 twice, so it has been advertised. And the Board's
26 policy has been, since I have been here and prior to

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1 that, that when a case is postponed, the applicant -
2 - we postpone it to a date certain in front of the
3 applicant so we do not have to go back and renotice.
4 Now, we will certainly make the attempt and we will
5 make sure that we put it on your agendas. These
6 agendas are actually published 40 days prior to them
7 coming out. So it is very hard for us to go back and
8 redo the pertinent notice because we don't have that
9 opportunity.

10 CHAIRPERSON REID: They were -- excuse
11 me, Ms. Pruitt-Williams, they were notified at the
12 public hearing?

13 MS. PRUITT: Correct. Right.

14 MS. KING: And when was the public
15 hearing?

16 MS. PRUITT: The first time they were
17 scheduled was March -- I believe it was March.

18 MS. KING: There was plenty of time
19 between their being rescheduled in March and your
20 publishing the notice for today's hearing for it to
21 be on there.

22 MS. PRUITT: April 21.

23 MS. KING: Even though it is not
24 required to be published on the --

25 MS. PRUITT: Ms. King, they were heard
26 on April 21. That was the hearing date.

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1 MS. KING: Okay.

2 MS. PRUITT: And then it was rescheduled
3 from there another time. This is the third
4 postponement.

5 MS. KING: Well, at least let us know
6 what we are supposed to be hearing, even if you
7 don't let the public know.

8 MS. PRUITT: Staff understands and
9 notice of that is taken and we will do so.

10 CHAIRPERSON REID: Also, this is an
11 appeal?

12 MR. MONTGOMERY: Yes.

13 MS. PRUITT: No. Actually, that came in
14 just this week.

15 MR. MONTGOMERY: We just got this on
16 Monday. This case was heard on February 22 at DCRA.

17 MS. PRUITT: They are just filing the
18 appeal with the office this week.

19 MR. MONTGOMERY: We just got the
20 decision.

21 MS. PRUITT: This is a new -- this is in
22 addition to the process. Then came for an
23 application and then they filed an appeal subsequent
24 to their application.

25 CHAIRPERSON REID: All right. So --

26 MR. BERGSTEIN: Madam Chair, if -- Mr.

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1 Aguglia is not here. If the applicant wants to
2 consolidate a new appeal with this application, and
3 that is what is being talked about, it seems to me
4 that he should request that in writing and allow Mr.
5 Aguglia a chance to respond. And then the Board
6 could rule upon it. But at this point Mr. Aguglia -
7 -

8 MR. MONTGOMERY: Certainly I would like
9 to have him have an opportunity to respond. I did
10 send him a notice about this, but I would --

11 CHAIRPERSON REID: I think that that
12 would be the proper procedure to allow Mr. Aguglia,
13 if that is his name, to respond to your submission.
14 And to go ahead and give you another postponement.
15 This being the third, it should also be the last.
16 This has been continued twice?

17 MS. PRUITT: This is the second time
18 they are requesting it.

19 CHAIRPERSON REID: The second time.

20 MS. PRUITT: Right. The third time we
21 are here, though.

22 CHAIRPERSON REID: Okay. All right.
23 Well, then we will go ahead and -- I have no problem
24 with it if the other Board members have no problem
25 with it.

26 MS. KING: I'll be gone by that time.

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1 CHAIRPERSON REID: We are postponing it
2 for a date certain.

3 MS. PRUITT: Why don't we put it on the
4 October 1, so that will allow me to give everybody
5 notice.

6 CHAIRPERSON REID: That gives enough
7 time to be able to do the notices back and forth.

8 MS. PRUITT: And we will inform Mr.
9 Aguglia, who is represented by -- who is
10 representing the opposition.

11 CHAIRPERSON REID: Thank you.

12 MR. MONTGOMERY: May I ask on the
13 procedure for this consolidation and also the
14 appeal, if it is consolidated, can we avoid the
15 \$800.00 appeal fee?

16 MS. PRUITT: No.

17 CHAIRPERSON REID: They are two separate
18 issues.

19 MR. MONTGOMERY: Can we get an
20 extension? 15 days is the limit to file -- to come
21 up with the \$800.00 and file the appeal. Can we get
22 an extension of that?

23 MS. PRUITT: This is an appeal of DCRA's
24 decision?

25 MR. MONTGOMERY: Yes.

26 CHAIRPERSON REID: Mr. Aguglia, please

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1 come forward. You just missed discussing this
2 particular case.

3 MR. AGUGLIA: I apologize for being
4 late.

5 MR. MONTGOMERY: I asked if we
6 should wait.

7 MR. AGUGLIA: Okay. You are asking for
8 a continuance?

9 MR. MONTGOMERY: We are, yes.

10 MS. KING: But he is also appealing the
11 DCRA decision and wants to consolidate the two
12 cases.

13 MR. AGUGLIA: Well, our feeling is that
14 this is -- I am trying to put it politely, just a
15 stall tactic or delay tactic. He has asked for a
16 medical variance, and Ms. Reid said there is no such
17 thing as a medical variance. So he asked for more
18 time to submit opposition -- an opposition to our
19 various briefs that we filed in this case.
20 Absolutely nothing has been filed. Nothing. We
21 then got the decision on Monday from the Attorney
22 Examiner who stated that there were infractions and
23 there were violations and that there was a fine and
24 a penalty, and I had that submitted to the Board on
25 Monday. So our feeling is --

26 MS. KING: I remember this case.

 CHAIRPERSON REID: Yes. Let him

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1 continue.

2 MR. AGUGLIA: So this is an attempt --
3 the illegal pads have already been constructed.
4 They have already been constructed. This is an
5 attempt to try to get some sort of retroactive
6 relief, which I don't believe is permissible either.
7 I don't think he has the grounds for a variance and
8 I don't think he has the grounds to get some sort of
9 a retroactive application of this. And I think this
10 is just a delay tactic to keep the illegal pad there
11 so they can use it for additional parking for people
12 who are living in the house, and it is just another
13 attempt to continue this illegality. We would
14 prefer to go forward and have the case heard.

15 MR. MONTGOMERY: I would like to say we
16 only received this on Monday. We have been waiting
17 for this opinion and we only got it on Monday, two
18 days ago. It is 15 pages long. What is in here is
19 relevant to the application for a variance. So that
20 is why we are asking that it be consolidated -- the
21 appeal be consolidated with the variance.

22 MS. KING: Mr. Aguglia, what do you
23 want? We know what he wants us to do. What do you
24 want us to do?

25 MR. MONTGOMERY: Are you speaking to me?

26 MS. KING: No, I am speaking to Mr.

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1 Aguglia.

2 MR. AGUGLIA: Does the Board have
3 jurisdiction to hear or entertain the appeal of the
4 infraction? Does this Board?

5 MS. PRUITT: Yes, they do. We have not
6 scheduled civil infractions for a while. We have a
7 few to do.

8 MR. AGUGLIA: They do. I personally
9 think it has -- one does not have anything to do
10 with the other. I realize the Board is interested
11 in economy. I realize that. But I don't think one
12 has anything to do with the other. He was cited for
13 not going to -- not getting a building permit and
14 not going to the BZA for the variance and not going
15 to HPRB in order to get approval to do the permit
16 work because it is in an historic district.

17 MS. KING: It is in an historic
18 district?

19 MR. AGUGLIA: Yes, it is in the
20 Cleveland Park historic district. So none of those
21 were followed in the extension of the legal pad. So
22 that to me seems to be very different from the
23 request to have a variance based upon the three
24 criteria which he cited, and no support for any of
25 it.

26 CHAIRPERSON REID: If I recall

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1 correctly, it was -- the application was in effect
2 for a medical variance, and we discussed that and
3 said that was inappropriate and that you would have
4 to compile a case predicated upon the typical or
5 usual basis for a variance request or variance
6 relief, and that is what your case is supposed to be
7 built upon. Have you done that?

8 MR. MONTGOMERY: It has been -- well,
9 let me say first with respect to this case, the pads
10 -- there was an oral approval given in 1993. This
11 has been going on for --

12 MS. KING: An oral approval by whom?

13 MR. MONTGOMERY: Someone in the building
14 office.

15 MS. KING: There is no such thing in the
16 District Government as an oral approval.

17 MR. MONTGOMERY: No. What I wanted to
18 point out is that the pad was --

19 MS. KING: It doesn't exist, sir.

20 MR. MONTGOMERY: I wanted to point out
21 that the pad was, in fact, extended with the
22 understanding that it was approved.

23 MS. KING: Have you filed an affidavit
24 with us from the person who gave you that oral
25 approval saying that he approved it -- he or she
26 approved it?

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1 MR. MONTGOMERY: No. We have an
2 affidavit from Mr. Krause that he did get the
3 approval. But I wanted to point out that this has
4 been going on since 1993, six years, and we would
5 like --

6 MS. KING: Madam Chair, I would suggest
7 that we consolidate this whole case and hear it on
8 the 1st of October and dispose of it then. But
9 there will be no further postponements. Any further
10 requests for postponements, it seems to me, of
11 either the appeal or the case itself should lead us
12 to dismissal of the matter, if we can.

13 CHAIRPERSON REID: Well, I would agree
14 that given the fact that there seems to be a lot of
15 loose ends to this particular case, that we give one
16 additional extension until October 1 --

17 MS. PRUITT: It is October 6, I am
18 sorry.

19 CHAIRPERSON REID: October 6. And that
20 is the end of any further extensions. So everything
21 can be taken care of at that time.

22 MR. AGUGLIA: Will the cases be
23 consolidated at that point?

24 CHAIRPERSON REID: The cases -- I have
25 no problem with the cases being consolidated.

26 MS. PRUITT: That will give us enough

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1 time for a notice too. Because, I mean, we just got
2 the application.

3 CHAIRPERSON REID: Right. Right. For
4 more efficient use of our time, it would be so done
5 -- that we would consolidate.

6 MS. PRUITT: We can do so, yes.

7 MR. AGUGLIA: Has an appeal actually
8 been filed?

9 MR. MONTGOMERY: I filed it.

10 MR. AGUGLIA: Was there -- I mean an
11 appeal to consolidate it.

12 MR. MONTGOMERY: Not in the formal
13 sense. We have to pay an \$800.00 fee.

14 MR. AGUGLIA: I mean, at this point --
15 once it comes in what you are saying is that you
16 don't object to consolidation. There is nothing to
17 consolidate at this point because there is no
18 appeal.

19 MR. MONTGOMERY: No. I filed a notice
20 of appeal, but it has to be on your form and I
21 didn't have your form. We will file it.

22 MS. PRUITT: Excuse me, Mr. Montgomery.
23 Is that correct?

24 MR. MONTGOMERY: Yes.

25 MS. PRUITT: So let me just be sure.
26 You filed -- did you file an appeal at the front

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1 desk including your fee?

2 MR. MONTGOMERY: No. The fee has not
3 been paid.

4 MS. PRUITT: So we really don't have a
5 case to consolidate. Until we get that, we don't
6 give it -- it is not a case in this office.

7 MR. MONTGOMERY: Well, can we get a
8 ruling subject to filing within the 15 days?

9 MS. PRUITT: That is up to the Board.
10 But you would need to then file an appeal for civil
11 infraction.

12 MR. BERGSTEIN: Why don't you -- well,
13 what I would suggest -- because you can't
14 consolidate something that hasn't been filed yet.
15 What I would suggest is that when he files the
16 appeal that it be accompanied by a request for
17 consolidation. Mr. Aguglia, you don't oppose that?

18 MR. AGUGLIA: Given the Board economy of
19 time, I will not oppose.

20 MR. BERGSTEIN: All right. So it would
21 be an unopposed request for consolidation. At that
22 point, it could be consolidated and he understands
23 the hearings would be held together on that date.
24 Is that a --

25 CHAIRPERSON REID: All right. That is
26 fine with me.

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1 MS. KING: And, Madam Secretary, since I
2 will not be hearing any new cases after the end of
3 September, I will come back to finish this case.
4 Therefore, I would like it to be the first case --
5 we have a meeting in the morning and then start the
6 hearing in the afternoon?

7 MS. PRUITT: Correct.

8 MS. KING: Would you be kind enough to
9 schedule it as the first case?

10 MS. PRUITT: Yes.

11 MS. KING: So that I don't have to hang
12 around all afternoon.

13 MR. MONTGOMERY: I have another
14 procedural question. That is on filing a brief. We
15 have permission to file a brief?

16 CHAIRPERSON REID: You are asking if you
17 have permission? You mean your pre-hearing
18 submission?

19 MR. MONTGOMERY: Yes.

20 CHAIRPERSON REID: Sure. Sure. Just
21 make sure that you are within the time frame as far
22 as Mr. Hart. Meet with him -- confer with him after
23 the hearing to determine when you have to have your
24 submissions in.

25 MR. MONTGOMERY: With Mr. Hart?

26 CHAIRPERSON REID: Mr. Hart is the

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1 gentleman sitting right beside Ms. Pruitt-
2 Williams. He is the --

3 MR. MONTGOMERY: So I should check with
4 him later?

5 CHAIRPERSON REID: Yes.

6 MS. KING: But we will be hearing both
7 cases. And therefore, as you know, there is no such
8 thing as a medical variance, sir. You've got to
9 make your case, which you failed to do before. This
10 is your opportunity to make your case.

11 MR. MONTGOMERY: Yes, on additional
12 variance arguments. Thank you.

13 CHAIRPERSON REID: Thank you. Mr.
14 Aguglia, thank you very much. Are there any other
15 preliminary matters? Does the staff have any
16 preliminary matters?

17 MS. PRUITT: Actually, they were
18 handled.

19 CHAIRPERSON REID: All right.
20 Thank you. Please call the first case of the day.

21 MR. HART: The first case of the
22 morning, 16471, which is an appeal of 1300 First
23 Street, L.L.C., pursuant to 11 DCMR 3105 and 3106,
24 from the administrative decision of the Zoning
25 Administrator to issue a building permit No.
26 B00183471, for a sports bar and restaurant for 190
seats, "not sexually oriented", the appellant will

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1 be affected by the proposed use and the lack of
2 parking and loading space in a C-3-C District at
3 premises 33 New York Avenue, N.E. (Square 671, Lot
4 27). Will those persons planning to testify please
5 come forward and take the oath?

6 (WITNESSES ARE SWORN.)

7 MS. KING: Madam Chair, I have two
8 separate maps showing where this plot is. Did you
9 notice that? That the one supplied by -- I believe
10 by Mr. Sher -- is yours the one with the black
11 arrow? And then we have another one with a yellow.
12 Which plot is this?

13 MR. SHER: I supplied -- for the record,
14 my name is Steven E. Sher, the Director of Zoning
15 Services, with the Law Firm of Wilkes, Artis,
16 Hedrick and Lane. I believe that the one in your
17 left hand is the one that we had included in our
18 statement of the Appellant.

19 MS. KING: With the arrow?

20 MR. SHER: With the arrow. That is
21 correct.

22 MS. KING: Because this plot is the one
23 that is in yellow on something that was also in my
24 file.

25 MR. SHER: That is not ours.

26 MS. KING: Exactly which lot is it?

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1 CHAIRPERSON REID: Oh, gee. That is not
2 -- you see, right here. This has been highlighted
3 in yellow and that one as well.

4 MS. KING: No, but you see Steve is
5 saying that this is the plot. Would you come
6 forward and tell us exactly where we are?

7 CHAIRPERSON REID: Is it number -- what
8 is the number on the lot? On the Square?

9 MR. SHER: The building is 33 New York
10 Avenue, and it is I believe correctly the one that
11 we have identified with the arrow. It runs through
12 from New York Avenue to N Street. There is a
13 building on the lot and then there is an open area
14 adjacent to the building on the west side of the
15 building. But this is the lot here. I do not
16 believe this one is correct.

17 MS. KING: So they own this whole thing?

18 MR. SHER: Yes.

19 MS. KING: Including this blank space?

20 MR. SHER: Not this.

21 MS. KING: But not that. Okay.

22 CHAIRPERSON REID: Okay. Show me, Mr.
23 Sher, which one --

24 MS. KING: What he is saying is that
25 this is what they own.

26 CHAIRPERSON REID: And that has that

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1 circle around it?

2 MR. SHER: It is not this.

3 CHAIRPERSON REID: Okay. Then who
4 highlighted that?

5 MS. PRUITT: That was done by Mr.
6 Nyarku. I am going to get him now.

7 CHAIRPERSON REID: Speak up, please.
8 Because we don't have the PA system. So you have to
9 subject your voices. Put a circle around exactly
10 what parcel we are discussing here this morning,
11 sir.

12 MR. SHER: It is one lot.

13 MR. PARSONS: Okay, what is this area?

14 MR. SHER: That represents the lot
15 itself. That is the tax plat and the other is the
16 Sandborne Atlas plat that shows where the property
17 is with the building on it.

18 CHAIRPERSON REID: Speak loudly and give
19 your name.

20 MR. GELL: My name is Steven Gell. I am
21 representing the lessee of the property. This is
22 lot 27. There is a building and a vacant lot which
23 is used for parking, and that is shown perhaps a
24 little bit better on this diagram, which Mr. Sher
25 received.

26 MS. KING: Do you have multiple copies

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1 of that?

2 MR. GELL: Yes, I do.

3 CHAIRPERSON REID: Give it to staff,
4 please.

5 CHAIRPERSON REID: It is actually two
6 parcels that have been combined -- two lots --

7 MR. SHER: It is just one lot. It is
8 one lot 27. There is a building and an open area on
9 the same lot.

10 MR. GELL: One of the maps does not show
11 the building. It just shows the whole lot.

12 CHAIRPERSON REID: All right, maybe get
13 that and give that to staff.

14 MR. GELL: This one shows the building
15 separate from the lot.

16 MR. SHER: That yellow highlighting is
17 wrong.

18 MS. BAILEY: Madam Chair -- excuse me,
19 Madam Chair. The information that is being
20 discussed is not being heard by the audience and
21 there are some members of the audience who are
22 interested in the case.

23 MS. KING: I can't hear a word you are
24 saying, Beverly.

25 CHAIRPERSON REID: What she said is that
26 the discussion heard at the dias was not picked up

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1 by persons in the audience who are interested in the
2 case. And basically what we were doing was that
3 there was a problem with the plat map and the
4 Sandborne map, where the wrong lot on the square was
5 identified. So we were getting a clarification as
6 to exactly what plat we were talking about. And Mr.
7 Gell submitted for us a more distinctive plat that
8 implicitly shows to us exactly where the parcel is
9 and where the property is located. And what it is
10 is a building and a lot combined.

11 MR. GELL: That is correct.

12 MR. BERGSTEIN: Excuse me, is there any
13 way for the record that we could just mark it
14 somehow so that we know what that document is?
15 Either put an A on it or something so that we all
16 know what that document is?

17 MS. KING: It has --

18 CHAIRPERSON REID: Exhibit A.

19 MR. BERGSTEIN: Or describe it somehow
20 so that --

21 MS. KING: It is a fax dated 6/28/99
22 from Rudnick-D.C. And it is two pages.

23 CHAIRPERSON REID: And we will mark it
24 Exhibit A.

25 MR. GELL: You have two exhibits, I
26 think. One from Mr. Sher and one from us.

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1 MR. SHER: There is yet another exhibit
2 that I think the staff prepared that showed that
3 property highlighted in yellow which didn't have the
4 right property on it.

5 CHAIRPERSON REID: Ms. King stated that
6 it is a fax from Rudnick-D.C. indicated at the top
7 that distinguishes this particular --

8 MR. GELL: That is correct.

9 CHAIRPERSON REID: The picture from the
10 other, and this is the one that we are using. We
11 are all on the same page with this?

12 MS. PRUITT: Madam Chair, this is going
13 to be part of the record and it will be logged in
14 and have its own exhibit number.

15 CHAIRPERSON REID: By exhibit number.
16 Okay.

17 MS. PRUITT: So it will be identified.
18 I don't know where it will be --

19 CHAIRPERSON REID: Separately. Okay.

20 MR. SHER: Madam Chair and members of
21 the Board, again good morning. My name is Steven E.
22 Sher. I am the Director of Zoning Services with the
23 Law Firm of Wilkes, Artis, Hedrick and Lane with
24 Norman N. Glasgow, Jr. We represent the Appellant
25 in this matter, 1300 First Street, L.L.C.

26 What is before you is the appeal of the

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1 issuance of a certificate of occupancy for the
2 building at 33 New York Avenue, N.E., which is
3 located on the south side of New York Avenue between
4 North Capitol and First Streets, N.E. The
5 certificate of occupancy was issued on March 8,
6 1999. The C of O number is B00183471, and it
7 allowed the use of those premises, 33 New York
8 Avenue, N.E., as a sport bar and restaurant, 190
9 seats, "not sexually oriented". We have submitted a
10 statement of the Appellant to the Board. We filed
11 that two weeks ago, and I hope you have that in your
12 package. The application for the certificate of
13 occupancy is marked as Exhibit B of that statement,
14 and the certificate of occupancy itself is marked as
15 Exhibit C to that statement.

16 We are here this morning challenging the
17 issuance of that statement. We believe that the
18 Department of Consumer and Regulatory Affairs acted
19 in error in issuing that certificate of occupancy,
20 and we have a number of bases that we would like to
21 present to the Board this morning indicating why
22 that C of O was issued in error.

23 Basically, one, we believe that the use
24 does not comply with the off-street parking
25 requirements for that particular location and that
26 particular zone. Two, we believe the use does not

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1 comply with the off-street loading requirements for
2 that use in that zone. And three, we believe that
3 there are errors on the face of the certificate of
4 occupancy which render it invalid.

5 In order to hopefully try and simplify
6 my discussion of the parking and loading
7 requirements, I would like to hand to the Board two
8 pages which summarize the parking and loading
9 requirements, and this is taken exactly from the
10 statement. It is no new information. It is just a
11 summary of what we provided before.

12 Madam Chair, I don't see anybody here
13 from the Zoning Administrator's Office, or I would
14 hand them one too.

15 MS. PRUITT: We called them last week
16 and sent several letters. Mr. Hart is trying right
17 now. So it was our understanding that somebody was
18 going to be here.

19 CHAIRPERSON REID: That being the case,
20 Ms. Pruitt-Williams, do you recommend that we
21 continue without a representation from the Zoning
22 Administrator's Office?

23 MS. PRUITT: That is --

24 CHAIRPERSON REID: Mr. Bergstein --

25 MS. PRUITT: They can choose not to
26 defend it.

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1 MR. BERGSTEIN: They are not here. They
2 proceed at their own risk by not being here.

3 MS. PRUITT: They have been more than
4 adequately notified.

5 MR. SHER: Okay. Let me then go to the
6 substance of our arguments. With respect to the
7 off-street parking requirements, the first page of
8 the sheet that I just handed you. The zoning
9 regulations specify that for a building built before
10 the effective date of the zoning regulations, May
11 12, 1958, when the use of the building is changed,
12 parking is required to the extent that the new use
13 requires more parking spaces than the previous use.
14 That is in Section 2100.4 of the regulations, and I
15 have provided that section in its entirety under Tab
16 D of our statement. So the exact language is there
17 for you to see.

18 This is a building that was built prior
19 to May 12, 1958. From the certificate of occupancy
20 application, again Exhibit B to the statement, the
21 previous use of this premises was for offices. The
22 proposed use is a sports bar and restaurant 190
23 seats. The square feet occupied, 18,000 square
24 feet. And that is taken from, again, the C of O
25 application, line 12, proposed occupancy load, 190
26 persons, square feet occupied, 18,000.

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1 Under the parking requirements of the
2 zoning regulations for a C-3-C district, office use
3 requires one parking space for each 1800 square feet
4 in excess of 2,000 square feet. Again, I have
5 provided the exact language of the regulations under
6 our Tab E, the schedule of parking requirements.
7 Retail requires parking spaces at the rate of one
8 space for each 750 square feet in excess of 3,000
9 square feet. So for an 18,000 square foot building,
10 the office requires 9 spaces, 18,000 minus 2,000
11 divided by 1800 equals 8.89 or rounded up to 9. The
12 retail requirement, the requirement applicable to a
13 restaurant is 20 spaces. 18,000 minus 3,000 divided
14 by 750 equals 20 spaces. The difference, therefore,
15 that the restaurant requires more than what the
16 office required is 11 spaces. 20 required for the
17 retail/restaurant, 9 required for the office, and
18 the difference is 11. In other words, this use,
19 while it was not required to provide any parking
20 when it was an office building, now is required to
21 provide 11 spaces when the use is changed to a
22 restaurant.

23 By observation, there is parking on the
24 New York Avenue and N Street sides of the building,
25 and there are photographs of the building. They are
26 attached as our exhibit under Tab I, and you can see

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1 striped spaces to park on both the N Street and New
2 York Avenue sides of the building, but that parking
3 is in public space. The building comes all the way
4 to the lot line and therefore that parking cannot be
5 counted to meet the requirements of the zoning
6 regulations. There is no off-street parking
7 currently provided on that outside area of the lot.
8 If you look at the second photograph or the second
9 page of photographs under Tab I, there is a
10 photograph of that open area. It is gated. It is
11 not striped. It is not lined. It is not even
12 suitable for parking if you look at the way the pad
13 sits in that lot. This photograph was taken on
14 March 15. I have a photograph that I took two days
15 ago and the condition hasn't changed any. There is
16 no parking provided on the outside area of that lot.
17 There was no parking provided -- there was no
18 indication when the certificate of occupancy
19 application was filed and approved by the District
20 that they inquired as to whether parking was
21 required. There is no information attached to the C
22 of O application or on record in the Department of
23 Consumer and Regulatory Affairs indicating that they
24 asked whether parking was to be provided or that
25 parking was to be provided.

26 As a consequence, this building which is

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1 to provide 11 off-street parking spaces doesn't
2 appear to have any, and we believe that that is an
3 error on the part of the District in approving the
4 certificate of occupancy application for a
5 restaurant use on this premises.

6 The second argument, and it is a similar
7 argument, relates to the off-street loading
8 requirements. That is the second page of the two
9 that I just handed you. Again, a building built
10 before the effective date when the use of that
11 building is changed, loading is required to the
12 extent that the new use requires more loading berths
13 than the previous use. And again, I have attached
14 that section, 2200.4, to our statement. It is under
15 -- let me get the right tab here -- it is under Tab
16 K to the statement -- I am sorry, it is under Tab J,
17 which is the authority, and then Tab K is the actual
18 schedule of loading berths.

19 If you look at the schedule of loading
20 berths in 2201.1, office use requires 1 30-foot deep
21 berth and one service delivery loading space for a
22 building with between 30,000 and 100,000 square
23 feet. This building is less than 30,000 square
24 feet. So office use required no loading berth or
25 service delivery space. Retail or service
26 establishment with between 8,000 and 20,000 square

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1 feet requires one 30-foot berth and a service
2 delivery space. So for our 18,000 square foot
3 building, again, the office requires no loading
4 berth but retail requires one and one service
5 delivery space. The difference is that one berth
6 and one service delivery space. There is no loading
7 indicated as being provided anywhere on the outside
8 of the building. There is a roll-up door on the N
9 Street side of the building. I have no idea what
10 goes on inside the building. There is no
11 information provided in the certificate of occupancy
12 application indicating in any way that loading is
13 provided which meets the requirements of the
14 regulations -- a 30-foot wide berth and a service
15 delivery loading space.

16 So in that respect, we believe that the
17 District erred in issuing a certificate of occupancy
18 without requiring loading as provided for in Chapter
19 22.

20 In addition to that, we believe that the
21 certificate of occupancy is invalid on its face for
22 two reasons. Number one, the certificate of
23 occupancy application -- and again, that is under
24 Tab B -- lists the property as being Lot 27 in
25 Square 617. The certificate of occupancy issued is
26 for Lot 27 in Square 617. Unfortunately, this isn't

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1 square 617. It is Square 671. So on its face, the
2 C of O is invalid. Beyond that, the certificate of
3 occupancy application indicates that the property is
4 located in a CM-1 zone. The certificate of
5 occupancy issued says that the property is located
6 in a CM-1 zone. That is curious in and of itself
7 because the property has never been in a CM-1 zone.
8 From 1958 until 1997, the property was in a CM-3
9 zone. If you look at the zoning map under Tab L, it
10 shows the property. And again, we have drawn an
11 arrow to the subject square showing that the
12 property is in a CM-3 or was in a CM-3 zone. By
13 Order No. 821 dated August 4, 1997, effective
14 September 26, 1997 -- and that is under Tab M of our
15 statement -- the Zoning Commission rezoned this
16 property to C-3-C. So at the time the certificate
17 of occupancy application was filed and at the time
18 the certificate of occupancy was issued, the
19 property was not zoned CM-1, nor was it zoned CM-3.
20 It was zoned C-3-C, and had been so for about a year
21 and a half. The District erred in
22 issuing a certificate of occupancy based on the
23 wrong zone and applied -- I don't know what parking
24 and loading standards they applied, but they clearly
25 didn't apply the correct ones. Because they didn't
26 know what the correct zoning was for the property.

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1 It is, therefore, our view that the Department of
2 Consumer and Regulatory Affairs erred in issuing the
3 certificate of occupancy, that the certificate of
4 occupancy should be revoked, and that the Department
5 should be directed not to issue a new certificate of
6 occupancy until the applicant, therefore, can
7 demonstrate that they meet all of the requirements
8 of the zoning regulations, including both off-street
9 parking and off-street loading.

10 CHAIRPERSON REID: Thank you.

11 MS. KING: I have no questions. Mr.
12 Sher's argument seems very clear to me.

13 CHAIRPERSON REID: All right.

14 MR. BERGSTEIN: Could I ask Mr. Sher a
15 question?

16 CHAIRPERSON REID: Yes.

17 MR. BERGSTEIN: Could I look at Section
18 2100?

19 CHAIRPERSON REID: What tab is that, Mr.
20 Sher?

21 MR. SHER: It is Tab D, I believe.

22 MR. BERGSTEIN: And I am looking at --
23 this building was constructed before 1958?

24 MR. SHER: That is correct.

25 MR. BERGSTEIN: You are presuming that
26 Section 2100.4 applies to buildings constructed

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1 before 1958. And I just would like to hear why you
2 believe that that is true. I am not saying that it
3 is one way or the other. But when I was looking at
4 this section, I was also looking at Section 2100.6
5 and 2100.7, which deal very specifically with
6 changes in intensity of use of buildings constructed
7 before 1958. And the section 2100.4 doesn't call
8 out buildings constructed before 1958, and also
9 speaks of required uses -- speaks to required uses.
10 So I would be interested in knowing why you believe
11 that that section does apply to buildings
12 constructed before May 12, 1958.

13 MR. SHER: Well, I'll answer that in two
14 ways. Number one, it doesn't say that it doesn't
15 apply to a building built before or after 1958, so I
16 believe it is intended to apply to all buildings,
17 number one. Number two, it has been my experience
18 in almost 30 years of practicing at this stuff that
19 that section has been applied to all buildings, both
20 those built before and after. So that you are not
21 required to provide parking for a building built
22 before 1958 if you don't change the use. When you
23 do change -- and that, I believe, comes out of
24 2100.1, which says all buildings and structures
25 erected after May 12, 1958 shall be provided with
26 parking. 2100.4 says when you change the use of the

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1 building and that use requires more parking spaces.
2 So there are circumstances where you change the use
3 and you don't have to provide parking. If I change
4 the use from office to a use which required less
5 parking, I am not required to provide any. If I
6 changed it to a use which required the same number
7 of parking spaces, I am not required to provide any.
8 However, when I change it to a use which requires
9 more parking, then I have to provide the difference
10 between that which would have been required for the
11 office building and that which is now required for
12 my new use.

13 MS. KING: And in this argument, do you
14 cite also 2100.6 and 2100.7?

15 MR. SHER: Well, 2100.6 and 2100.7 talk
16 about changing the intensity of use rather than
17 changing the use itself. So that if I had an
18 apartment building that had 100 units and I
19 reconfigured that apartment building so that I had
20 150 units -- I haven't changed the square footage of
21 the building, but I have changed the number of units
22 in the building and the number of units is the
23 indicator for the number of required parking spaces.

24 MS. KING: So this change from an office
25 use to a sports bar use is changing the seating
26 capacity in 2100.6 and the intensity of use in

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1 2100.7. MR. SHER: Well, the only
2 reason I wouldn't say it changes the intensity of
3 use is that for parking purposes, the indicator of
4 the number of spaces is the square footage. The
5 square footage of the building doesn't change going
6 from office to retail. So in that respect --

7 MS. KING: But the seating capacity in
8 2100.6.

9 MR. SHER: Well in office, there was no
10 indication of seating capacity. So I don't know how
11 many people worked in the building.

12 MS. KING: Okay.

13 MR. SHER: The indicator for parking is
14 square footage. That didn't change. So I wouldn't
15 say that the intensity of the building changed,
16 whereas I might if it had been the number of
17 apartment units in the building. But in this case,
18 the use itself changed. It changed from office to
19 restaurant. And that, I believe, is covered not by
20 2100.6 and 2100.7, but by 2100.4. Frankly, if the
21 Board were to rule somehow that no parking at all is
22 ever required for a building built before 1958, 99
23 percent of the time I would stand up and applaud.
24 Because that works to my benefit and my clients'
25 benefits almost all the time. That is not the way
26 the regulations have ever been read before. I don't

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1 even think that Mr. Gell would argue that he is out
2 of that issue. But if the Board wants to go there,
3 please do so.

4 CHAIRPERSON REID: Okay. Any other
5 questions?

6 MR. BERGSTEIN: No, that is the only
7 question I had of Mr. Sher.

8 CHAIRPERSON REID: All right. No word
9 from the ZA's office?

10 MS. PRUITT: Yes. Staff did call and
11 spoke to Ms. Dennis, and she remembered the call and
12 they are not sending anybody.

13 MS. KING: I can't hear you, Ms. Pruitt-
14 Williams.

15 MS. PRUITT: Staff called and spoke with
16 Mrs. Dennis. They are aware of the case and they
17 were aware of the calls and that we had called them
18 several times, but they are not sending a
19 representative.

20 MS. KING: Okay.

21 CHAIRPERSON REID: Okay. The owner or
22 operator of the property?

23 MR. GELL: I am sorry, did you call me?

24 CHAIRPERSON REID: Yes, the owner or
25 operator?

26 MS. PRUITT: Mr. Gell is representing

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1 the owner.

2 CHAIRPERSON REID: Okay.

3 MR. GELL: Madam Chair and members of
4 the Board, my name is Steven Gell and I am
5 representing the lessee of the property. With me --
6 behind me is Mr. Robert Bell, who is the lessee, and
7 his partner, Mr. Richard Merritt. And seated next
8 to me is Ms. Gladys Hicks, who is the former Deputy
9 Zoning Administrator. I would at this time ask the
10 Board to accept Ms. Hicks as an expert witness. If
11 the Board would like, I would be glad to go through
12 her background and her resume. It might actually
13 enlighten the Board as to the quite extensive
14 background that she has in this field.

15 CHAIRPERSON REID: Just one second,
16 please, Mr. Gell. Mr. Sher, did you wish to comment
17 on that last point?

18 MR. SHER: Madam Chair, I don't think I
19 am in any way going to stand up here and challenge
20 Ms. Hicks' knowledge of the zoning regulations as
21 probably second to mine in the District of Columbia.
22 However, Ms. Hicks was in the Zoning Administrator's
23 Office for many years. She was the acting zoning
24 administrator until I am not exactly sure when and
25 was the Deputy Zoning Administrator. Before she
26 left the District Government, she was in the

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1 Department of Consumer and Regulatory Affairs at the
2 time that this certificate of occupancy application
3 was considered by the Government. I don't know what
4 role or whatever Ms. Hicks may have had in that
5 consideration, but I've got some real problems with
6 her appearing as an expert witness on behalf of
7 someone who is now challenging the decision made by
8 that same department.

9 MS. KING: Is it true, Ms. Hicks, that
10 you were employed at DCRA in the Zoning
11 Administration when this certificate of occupancy
12 was considered?

13 MS. HICKS: I have been employed --
14 well, I was employed with the Department of Consumer
15 and Regulatory Affairs Building and Land Regulation
16 Administration and Zoning Division from January 18,
17 1982 until July 18, 1999.

18 MS. KING: Oh, so just a few days ago.

19 MR. GELL: Yes. She retired, I think,
20 from the second --

21 MS. HICKS: It was effective June 18 --
22 on June 18.

23 MS. KING: And what is the date of the
24 certificate of occupancy?

25 MR. SHER: March 8, 1999.

26 MR. GELL: Ms. King, may I comment on

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1 this, please?

2 CHAIRPERSON REID: Just wait one second.
3 I need to get a reading as to whether or not -- does
4 it matter whether or not whether she was actively
5 involved directly in this particular proceeding or
6 this particular certificate of occupancy, or by
7 virtue of the fact that she was employed there,
8 would that render her not able to participate in
9 this particular case.

10 MR. BERGSTEIN: Let me ask Mr. Sher a
11 question. Your objection does not really go to her
12 qualifications as an expert but to the weight that
13 the Board should accept her testimony given the fact
14 that she was an employee of the agency at the time
15 that the certificate was issued. There are experts
16 who do testify who are employees of in fact the same
17 party who is a party in the case. That doesn't
18 disqualify them from being an expert. It goes to
19 the weight that is given their testimony.

20 MR. SHER: I think I have an objection
21 that goes beyond that. As a -- well, she was an
22 employee of the Department of a ruling that she now
23 seeks to challenge, and she was in the Department at
24 the time that that ruling was made and arguably has
25 some responsibility for the administration of the
26 zoning regulations. I don't know to what extent she

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1 may have contributed to the ruling or not. All
2 applications for certificates of occupancy and
3 building permits go through the Zoning
4 Administrator's office and are ruled upon by
5 employees of that office, including the Deputy
6 Zoning Administrator and the still acting Zoning
7 Administrator, Mr. Lorenko. I just don't --

8 CHAIRPERSON REID: Why don't we get
9 clarification from Mrs. Hicks. Were you directly
10 involved in this particular certificate of occupancy
11 to your recollection?

12 MS. HICKS: I am positive that I was not
13 involved. The street address is not familiar.

14 CHAIRPERSON REID: Directly.

15 MS. HICKS: Directly or indirectly.

16 MS. KING: You were not supervising the
17 people who --

18 MS. KING: I was supervising, but the --
19 well, the individuals who review the building
20 permits and the certificates of occupancy, they are
21 not always sitting in the Zoning Administrator's
22 office. They are in the permits division where
23 permits are processed.

24 CHAIRPERSON REID: So to your
25 recollection, you don't have any knowledge of this
26 particular application for a certificate of

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1 occupancy?

2 MS. HICKS: No, I do not.

3 CHAIRPERSON REID: Mr. Gell?

4 MR. GELL: Ms. Reid, in fact I was
5 concerned about this when I first talked to Ms.
6 Hicks, because I am fully aware of the federal law
7 that says that a person who leaves Federal or
8 District employment cannot testify ever on something
9 in which they were personally and substantially
10 involved. And for I think it is one -- perhaps that
11 is two years now, I think -- on matters that were
12 under their jurisdiction. So we went into the
13 question into whether the people who made the
14 decision -- and I think Mr. Toa Bello actually
15 signed the application -- was reporting to her with
16 respect to these matters. And apparently on this,
17 that was not the case. Mr. Armondo Lorenko at that
18 time was the acting Zoning Administrator. And Ms.
19 Hicks, while she had the title of Deputy, she had
20 some very special duties that did not involve this
21 matter. So it was our judgment that in fact she had
22 not violated any federal statute, nor should she be
23 disqualified on the basis that she was in the office
24 at the time. She had no personal knowledge or
25 supervision authority.

26 MS. KING: If she has no knowledge of

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1 this, what is she going to testify to?

2 MR. GELL: I have asked Ms. Hicks to
3 testify as to the practice in the office on how
4 these calculations are made. I think it is crucial
5 to the Board to find out what the history is on how
6 you make the calculation of how much parking is
7 needed. Our view is very different from Mr. Sher's
8 as to the proper way to make the calculation. She
9 has also, as an expert, viewed the site and has some
10 comments to make about the site itself and how it
11 complies with the zoning code. So I would be happy
12 to present her testimony.

13 MR. SHER: I don't really want to drag
14 this out, Madam Chair, but I have a serious
15 objection to the Board accepting the testimony of
16 Mrs. Hicks. I just don't see how someone who was
17 responsible for supervising that office and who for
18 a significant period of time was the acting Zoning
19 Administrator for the District of Columbia and who
20 had the ultimate responsibility to interpret and
21 apply the regulations, who supervised among others
22 Mr. Bello, who was the person who actually ruled
23 upon the C of O or who signed off on the C of O
24 application can now turn around and appear and
25 challenge a certificate of occupancy issued while
26 she was still an employee of that office. That is

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1 up to the Board to decide.

2 MS. KING: I agree with Mr. Sher.

3 MR. PARSONS: I agree with Mr. Sher
4 completely.

5 MR. GELL: May I?

6 CHAIRPERSON REID: Okay.

7 MR. GELL: Ms. Hicks is not challenging
8 the certificate of occupancy. She is, in fact,
9 supporting the certificate of occupancy. Mr. Bello
10 or nobody from the Office of Zoning is here to
11 provide testimony. There is not -- Mr. Sher has not
12 pointed to any violation of federal law or any case
13 that says she cannot appear or anything other than
14 his own feeling that she can't be an expert witness
15 on this case. And I would respectfully submit to
16 the Board that that has never been the test of
17 whether somebody could come back as an expert
18 witness and testify. There is a very precise law on
19 the subject.

20 MR. PARSONS: I cannot construe this as
21 anything more than her defending herself. She should
22 be up here on the other side. She is going to be
23 defending a decision that was made by her staff
24 while she had jurisdiction over it.

25 MS. KING: I completely concur.

26 MR. PARSONS: And I just don't think we

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1 should proceed.

2 MS. KING: I agree.

3 CHAIRPERSON REID: Okay. I think that
4 basically it is the feeling of the Board that it
5 would not be -- while it may be legally appropriate,
6 from an ethical aspect it perhaps would not be --

7 MS. KING: I am not sure that that is
8 true either.

9 CHAIRPERSON REID: What I was saying,
10 Ms. King, is that I am not sure. And as such,
11 rather than to -- if we are going to err, I am going
12 to err on the side of caution in this regard. That
13 does not preclude you from being able to use or the
14 applicants to be able to give us the information
15 that is needed in order to make your case. But I
16 think that the idea of Mrs. Hicks testifying here
17 today is not going to set well with this Board. So
18 you will have to proceed without her as an expert
19 witness. And understand that it is a call that we
20 are making, which is basically our gut feeling as to
21 which way to proceed with this.

22 MR. BERGSTEIN: I am just thinking out
23 loud, I guess. But if he is calling her -- first of
24 all, I am not even sure it is expert testimony.
25 There are two things the proffer has been about.
26 One is what the procedures were at the Office of

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1 Zoning at that time. And second, I guess, an
2 opinion with respect to interpretation of zoning
3 procedures. The first part of that, which is purely
4 factual, I don't know -- the Board may want to
5 consider whether or not, since Ms. Hicks was an
6 employee at that time, why she could not be called
7 as a fact witness just to state her recollection of
8 what that procedure was. The rest of the issues,
9 the expert issues, the Board may consider in another
10 aspect. But if someone is a past employee and a
11 party simply wants to know what the practices were
12 at that time and what her observations were, I would
13 think that anybody could call Ms. Hicks in that
14 capacity. The expert issue is I think something
15 else. But, Mr. Sher, I don't know if you want to
16 respond to that. It seems to me that a party has a
17 right to call either a past employee or a future
18 employee if they want to illuminate an observed
19 process as opposed to giving opinions on that
20 process.

21 MR. SHER: Well, I think it is pretty
22 clear that Mr. Gell, on behalf of the operator of
23 the business, is calling Ms. Hicks in an attempt to
24 argue against the appeal and in support of the
25 decision of the Zoning Administrator. I just don't
26 think that you can take her as an independent expert

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1 having, you know, vast experience in the area, which
2 I don't quibble with. Obviously, she was in the
3 office for a lot of years. If she doesn't have a lot
4 of knowledge, she shouldn't have been there. And I
5 am not going to argue that. But I just don't think
6 under the law -- and I don't have -- I was not
7 prepared for Ms. Hicks this morning and I don't have
8 that section of the law with me. Mr. Gell alluded
9 to it, and I almost think he said it himself. That
10 while she may not -- if she was personally and
11 substantially involved in a matter -- and believe
12 me, I know that law very well because I have had to
13 deal with it for as long as I have been outside this
14 government. You cannot ever come back before the
15 Government on behalf of a private party, no matter
16 how long it takes. There is another provision of
17 the law, and I think Mr. Gell alluded to it, that
18 says for some period of time, and I thought it was
19 one year at the time that I left the Government, but
20 since that was thousands of years ago it may have
21 changed some, that if there was something in the
22 office that I was not personally and substantially
23 involved with but was still pending under the
24 official responsibilities of the office that I
25 supervised, I could not participate in that matter
26 on behalf of another private party either. That

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1 period of time has long since past, but I have
2 always -- I mean, you have never seen me down here
3 on a matter that somehow had any bearing on
4 something that was there while I was here. I just
5 don't see how Ms. Hicks can appear before you this
6 morning, expert or non-expert, to illuminate or not
7 illuminate, if she is appearing as
8 -- I will call it loosely an advocate or on behalf
9 of a private party in a matter involving the
10 District Government. I am not the lawyer around
11 here but --

12 MS. KING: That was a case that was
13 under her supervision when it was decided.

14 MR. BERGSTEIN: That is a separate
15 issue.

16 MS. KING: I totally agree with Mr.
17 Sher. As a former government employee myself I know
18 I followed this question of what you can and can't
19 do. I think it is clear.

20 MR. GELL: Well, Ms. King and Ms. Reid,
21 if I may, the case was not under her official
22 supervision. Therefore, she does not violate the
23 law. I know Mr. Sher would be the first to admit
24 that he is not an attorney and doesn't want to make
25 legal judgments. In fact, he doesn't even have the
26 language in front of him. I would be happy to make

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1 that available. I am willing to put Ms. Hicks on as
2 somebody who has knowledge about the way
3 interpretations were made. If I had --

4 MS. KING: Excuse me, Mr. Gell. Are you
5 arguing that she was not the eventual supervisor of
6 the person who issued this certificate of occupancy?

7 MR. GELL: What I am saying is the
8 language doesn't say that.

9 MS. KING: I want -- was she --

10 MR. GELL: But that is not what the
11 language says.

12 MS. KING: Was she in the line of
13 command? Was she superior to and had control over
14 the section that gave the certificate of occupancy?

15 MR. GELL: In a normal situation, one
16 would assume that the second person in the office
17 would have supervision over the people under her.
18 That is a reasonable assumption. That is not the
19 way the office operated. And in fact there was
20 direct communication and direct line of authority
21 between Mr. Lorenko and Mr. Bello on this case and
22 on many other cases as well. Simply because she was
23 named Deputy did not mean that she would be
24 responsible for everything that happened with regard
25 to the people under her. And I would just add one
26 more thing. Had I subpoenaed a member of the office

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1 now to come and give testimony along these lines, I
2 think you would probably accept their testimony.
3 And if you can consider Ms. Hicks as somebody who
4 has knowledge, who I subpoenaed instead of asked to
5 be an expert, I would present her testimony in that
6 light and not ask her to give her expert testimony.
7 Failing that, if you would give me some additional
8 time to bring somebody else before you instead of
9 Ms. Hicks, I would be grateful for that as well.
10 But I think her testimony can illuminate, and I
11 think Mr. Bergstein is absolutely right. You can
12 learn a great deal from her understanding about how
13 these things were handled in the office.

14 CHAIRPERSON REID: I think, Mr. Gell,
15 that basically what we are talking about here is a
16 comfort level. It appears that this Board is not
17 comfortable with Mrs. Hicks testifying today.
18 However, are you saying that you would like to ask
19 for a postponement or a continuance to have someone
20 to step into her shoes in that position to give some
21 expert testimony as to how the DCRA or the Zoning
22 Administrator's office operates?

23 MR. GELL: If somebody were here from
24 the office, they could answer a lot of these
25 questions without Ms. Hicks. But they are not here.

26 CHAIRPERSON REID: Do you feel that that

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1 information is so pertinent that you would not want
2 to continue today with Mrs. Hicks?

3 MR. GELL: Oh, it is absolutely central
4 to the case. I mean, Mr. Sher is absolutely wrong
5 about how these calculations are made. You have a
6 different -- you have a change in the zone and the
7 calculations are always made based on the previous
8 zone. If you make your calculations based on that,
9 they have credits for 20 parking spaces -- 20
10 parking spaces that they can now use. And all that
11 Mr. Sher is saying is that 20 parking spaces were
12 needed --

13 CHAIRPERSON REID: You don't think that
14 you could adequately proffer to us the necessary
15 information to counter what Mr. Sher has presented
16 to us this morning?

17 MR. GELL: I think I would have to
18 present it in a different way if I were to do that.
19 I would rather have some time to prepare that.

20 MS. KING: What about the defect of the
21 zone being C-3-C and the Lot number not being
22 correct on there?

23 MR. GELL: What Mr. Sher -- I am sorry,
24 I didn't mean to interrupt.

25 MS. KING: Not being correct on the C of
26 O.

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1 MR. GELL: Mr. Sher is absolutely right.
2 A mistake was made on the Square number. It should
3 be 671, not 617. A mistake was made on the CM-3.
4 It was copied -- actually, it wasn't put on the
5 application. It was copied from a previous C of O
6 that was apparently in the computer. We can show
7 you one that was issued in 1997, in which apparently
8 the CM-1 was put on.

9 CHAIRPERSON REID: Okay. Mr. Gell,
10 notwithstanding the information that Mrs. Hicks
11 would have testified to this morning, would not the
12 insufficiency in the zoning and in the square within
13 itself render the C of O invalid?

14 MR. GELL: I don't believe so. Because I
15 think that it could be shown through testimony that,
16 in fact, in either case the appropriate amount of
17 parking was being supplied. There was one other
18 mistake that I would mention.

19 CHAIRPERSON REID: Mr. Gell, how is that
20 possible when you are talking about an entirely
21 different lot.

22 MR. GELL: It is not a different lot.
23 It is a different square.

24 CHAIRPERSON REID: The C of O was issued
25 for an entirely different lot.

26 MR. GELL: The address was correct. The

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1 square number was incorrect.

2 CHAIRPERSON REID: And the zoning was
3 incorrect.

4 MR. GELL: Yes. There is another
5 mistake, which is perhaps most important of all, and
6 that is that the building on this lot was listed as
7 having 18,000 square feet, when in fact it has much
8 less than 14,000 square feet. We were prepared to
9 offer testimony to show that based on an actually
10 13,500 square foot building, that even under Mr.
11 Sher's calculations, there would be sufficient
12 parking. I will present that now or later or at
13 some time. But I would like the opportunity to
14 present it --

15 MS. KING: The application which
16 presumably was filled out by the applicant says
17 18,000 square feet.

18 MR. GELL: Yes, it does. And
19 unfortunately the gentleman who filled that out and
20 submitted it and obtained the C of O died a few
21 weeks ago. I can't ask him why he -- where he got
22 that number, but it was a mistake. I have some
23 additional testimony that doesn't depend on Ms.
24 Hicks to verify that.

25 CHAIRPERSON REID: Mr. Parsons, you had
26 a comment?

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1 MR. PARSONS: Mr. Gell has asked for
2 time to prepare and I think we ought to postpone.

3 CHAIRPERSON REID: Mr. Gell, that would
4 occur to me to probably be the best way to go at
5 this point.

6 (Whereupon, at 10:45 a.m. off the record
7 until 10:47 a.m.)

8 CHAIRPERSON REID: Mr. Sher and Mr.
9 Gell, we just conferred in a private conversation,
10 but I would want to make it clear on the record.
11 Corporation Counsel has advised us that there should
12 not be a problem with Mrs. Hicks testifying as a
13 former government employee.

14 MR. BERGSTEIN: What I am concerned
15 about -- let me just stay what I am concerned about.
16 The Government does use past employees as fact
17 witnesses. The Government would never be able to
18 defend an action if we could not use past employees
19 as fact witnesses. But I am not as familiar with
20 the law that Mr. Sher is referring to as I would
21 like to be. What I am concerned about is if Mr.
22 Gell wants to -- as an intervener wants to present
23 testimony as to the processes that took place at
24 that time, he should be given the opportunity to
25 present it. If it is purely factual and purely
26 observation, that is one thing. Not crossing the

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1 line into opinion testimony, which may be Mr. Sher's
2 issue. And maybe Mr. Gell needs to make a proffer
3 about what he is proposing to do. Either that or
4 allow Mr. Gell an opportunity to bring someone in
5 from DCRA who was an employee at that time that
6 could testify what the processes were. I am
7 concerned about crossing that line between fact and
8 opinion. But I think the intervener should have an
9 opportunity if he believes those facts are relevant
10 to be able to present those facts to the Board.

11 MR. PARSONS: What facts could be
12 relevant here? I don't think she should be
13 testifying on any aspect of this case that was
14 decided while she was there. If she wants to tell
15 us how they calculate C-3-C parking in general -- if
16 that is what you are concerned about, fine. But it
17 doesn't really have any application to this case.
18 In other words, in order to be pertinent, she would
19 have to say in this case, here is the way it was
20 done. I don't see the relationship between the
21 Government calling witnesses to defend itself and
22 this occurrence here. I don't get it. Certainly if
23 we wanted to call Ms. Hicks or the Zoning
24 Administrator did to come back to testify as to what
25 she was doing while she was in the office on March
26 8, fine. But this is not the case.

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1 MR. BERGSTEIN: I will defer to the
2 Board's judgment on this.

3 CHAIRPERSON REID: Let's bring some
4 closure to this. We are kind of beating this to
5 death. Mr. Gell, go ahead.

6 MR. GELL: I was simply going to respond
7 to Mr. Parsons. It would seem to me that in trying
8 to determine what is the correct way to interpret
9 these things, it might be useful to know how the
10 office has operated in the past over many, many
11 case, many, many years. That, I thought, was a
12 factual piece of information that was of use to the
13 Board and where Mrs. Hicks could be, perhaps without
14 peer, the right person to be giving it. But I will
15 yield to the Board's judgment on that.

16 MR. PARSONS: So she is not going to
17 talk about this case?

18 MR. GELL: I can certainly ask her the
19 general question of how these kinds of calculations
20 are made.

21 CHAIRPERSON REID: If it's only on
22 factual matters pertaining to procedures, and not
23 getting into the merits of this case or the essence
24 of this case, then I have no problem with it as long
25 as the other Board members do not.

26 MR. GELL: But I would still appreciate

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1 a postponement because of many of the other issues
2 that might come up ought to be given to the Board
3 through an expert or through some other kinds of
4 evidence.

5 CHAIRPERSON REID: So you still need a
6 postponement?

7 MR. GELL: I would ask for a
8 postponement, if I could.

9 CHAIRPERSON REID: Mr. Sher, do you have
10 any objection to a postponement? Under the
11 circumstances in that he did not anticipate that you
12 were going to object to him having Mrs. Hicks here,
13 that is just an accommodation.

14 MR. SHER: I have an objection in
15 principle, but I think Mr. Gell has conceded that
16 the very basis of the application on which the
17 certificate of occupancy was issued were erroneous.
18 I don't know how that changes by a postponement. So
19 in my mind, if he is going to present evidence that
20 says the building isn't 18,000 square feet, then I
21 don't think that is relevant to a certificate of
22 occupancy that was based upon that information
23 provided by his client's agent. I am sorry the man
24 can't be here to say why he put that down either.
25 But if the District relied upon that application or
26 relied upon that information and issued the C of O,

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1 I don't see how that is going to change any between
2 now and whatever other time we reconvene here. So in
3 my mind, the certificate of occupancy should be
4 revoked. It is clearly -- it was issued on the basis
5 of incorrect information. Mr. Gell has conceded
6 that. The C of O should be revoked and the use
7 should not be allowed to go forward. If Mr. Gell's
8 client wants to submit a new application based on
9 different information, I may be back here in six
10 months. If he has got information that shows that
11 under the way I would think the zoning regulation
12 should be interpreted that he has got enough
13 parking, then maybe I won't be back here in six
14 months. But I think it is clear on the basis of
15 what it before the Board today that that C of O was
16 issued in error by the Department of Consumer and
17 Regulatory Affairs and it should be revoked.

18 CHAIRPERSON REID: Okay. Thank you very
19 much, Mr. Sher. Nonetheless, we have yet to hear --
20 in all fairness, we have not heard from the other
21 side. So that being the case, I have no problems
22 with a postponement. Board members? Ms. King?

23 MS. KING: No problem.

24 CHAIRPERSON REID: All right. A date
25 certain, please?

26 MS. PRUITT: We can postpone it to

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1 October 6.

2 CHAIRPERSON REID: Okay. Then at that
3 time, Mr. Gell, I would think that it would be
4 prudent of you to at that time proffer another
5 expert witness, in that it appears there is a
6 problem with Mrs. Hicks testifying in this case.

7 MR. GELL: I gather that the Board would
8 be willing to hear Mrs. Hicks on the factual matters
9 but not on --

10 CHAIRPERSON REID: On the factual
11 matters. But you need -- by your own admission, you
12 are saying that you need to have an expert witness
13 to assist you with getting to the merits of the
14 case.

15 MR. GELL: I have to rethink that. I
16 may or may not. I may be able to provide some
17 additional evidentiary materials that wouldn't
18 require an expert. MS. KING: But you also
19 need to bear in mind that you have to deal with the
20 question of the erroneous application. The C of O
21 is based on an erroneous application. It is for the
22 wrong lot and the wrong zone.

23 CHAIRPERSON REID: And now we find for
24 the wrong square footage.

25 MS. KING: And for the wrong square
26 footage.

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1 MR. GELL: And that may be another
2 avenue to reapply.

3 MS. KING: You may want to consider
4 going back and reapplying for a C of O with all the
5 proper information.

6 MR. SHER: Madam Chair, can I make two
7 requests, please? The delay, if there is one --
8 since the prejudice in the delay works to my client,
9 the Appellant, I would like to ask two things.
10 Number one, I don't know whether this business is
11 actually operating or not. The times that I have
12 been out there, it has been locked and not
13 operating. I would like to ask that the Board order
14 that the status quo be preserved. In other words,
15 if they are not operating that they not be permitted
16 to operate. If they don't have a restaurant license
17 that a restaurant license not be issued until the
18 question of the appeal be resolved. They don't, I
19 believe, have an ABC license. I don't think they
20 should be allowed to get an ABC license. Of course,
21 you can't get an ABC license unless you've got a
22 restaurant license. You can't get a restaurant
23 license unless you have a valid C of O.

24 CHAIRPERSON REID: Right.

25 MR. SHER: We are raising a fundamental
26 challenge to that, and I would just ask that the

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1 Board order the Department of Consumer and
2 Regulatory Affairs to preserve the status quo. I
3 think that is fair to them and us.

4 CHAIRPERSON REID: I don't know if that
5 is within our purview to make such a directive. Is
6 it, Mr. Bergstein?

7 MR. BERGSTEIN: In terms of the C of O -
8 - and maybe Mr. Sher can illuminate that question
9 because I think it is a valid concern -- you have
10 before you a C of O that at least the intervener has
11 agreed is defective in certain respects. This case
12 is being continued because of the need to provide
13 another expert as I understand it, although Mr. Gell
14 didn't notice to anybody that he had an expert to
15 proffer. And maybe Mr. Sher can speak -- this is
16 the jurisdiction of the Board -- to basically stay
17 the implementation of a C of O. I don't think this
18 BZA can order the DCRA not to issue a restaurant
19 license or to order the ABC board not to issue a
20 liquor license. The only question is whether or not
21 the C of O could be considered at this point to have
22 been stayed in terms of the ability to --

23 MR. SHER: As Mr. Gell pointed out and
24 as the Board well knows, I am not an attorney. I am
25 not prepared to argue the matter of law. But I just
26 don't -- I think it works to the prejudice of my

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1 client if in fact you continue this case and he is
2 allowed to go about doing whatever it is that he is
3 doing.

4 MR. BERGSTEIN: Mr. Gell, if you are
5 granted a continuance, would you represent your
6 client won't operate this establishment until this
7 issue is resolved in October?

8 MR. GELL: No, I would not because in
9 fact it is operating. Mr. Bell would stand to lose
10 an enormous amount of money if he were forced to
11 stop operating or forced to stop --

12 MS. KING: You have a restaurant license
13 and an ABC license?

14 MR. GELL: I understand it is a
15 restaurant license. No an ABC license. But he is
16 operating a restaurant under a valid license.

17 CHAIRPERSON REID: Well, I thought I
18 understood Mr. Sher to say the status quo as to if
19 it is not operating, it will not open. But if it is
20 operating, it will remain --

21 MR. SHER: I don't know. The times I
22 have been out there, it hasn't been open. I will
23 accept their proffer that it is operating, in which
24 case I think they can. But if they don't have an
25 ABC license, I would request that no license be
26 issued.

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1 MR. GELL: We can't ask for an ABC
2 license until we have the zoning settled.

3 CHAIRPERSON REID: Okay. So in other
4 words, that solves that problem.

5 MR. SHER: That is fine. If that is the
6 understanding, then we will proceed on that.

7 MR. GELL: We can proceed before the
8 ABC, but obviously they won't grant it until we have
9 that. I would urge the Board not to bring this down
10 on Mr. Bell. He came in good faith. He got a C of
11 O. It was issued by an agency that was willing to
12 defend it in all the discussions that I had with
13 them. And I think that he ought to be allowed to
14 continue to operate. I also think that Mrs. Hicks
15 ought to be allowed to testify. I am sorry that we
16 can't get a return date until October 6. Obviously
17 that will do great harm to my client if the Board
18 were to impose some imposition on him that he can't
19 operate.

20 CHAIRPERSON REID: We are not going to
21 do that, Mr. Gell.

22 MR. GELL: But I was prepared to argue
23 that notwithstanding the problems with the C of O,
24 and I admit that they are there, that in any case it
25 would have been granted. That the mistakes were not
26 that bad for the C of O. And I think the Board

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1 would have accepted that, but I can't get to that
2 point until I present it.

3 CHAIRPERSON REID: Thank you.

4 MS. KING: Mr. Gell --

5 MR. SHER: Madam Chair, just one other
6 thing.

7 MS. KING: You go ahead, Steve.

8 MR. SHER: I was going to say given that
9 we now know who all the parties are, can we ask that
10 Mr. Gell serve us with whatever it is he intends to
11 rely upon and argue? I had no idea Mrs. Hicks was
12 going to be here this morning. I would have been
13 prepared or better prepared to have dealt with that
14 issue. But we filed and served our statement on
15 you. Prior to the October 6 hearing, if we could
16 get whatever it is so that we are all prepared and
17 we can deal with this once and for all.

18 CHAIRPERSON REID: All right, Mr. Hart
19 can give some time lines, Because that is
20 appropriate.

21 MR. GELL: I would like to respond to
22 that, if I may. Obviously, we would be happy to --
23 the materials we were going to submit today were not
24 prepared until yesterday. There wasn't time to give
25 it to them. Mrs. Hicks came into this case quite
26 late in the game. But, yes, we will certainly let

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1 you know.

2 MS. KING: Mr. Gell, I mean we are
3 talking about postponing this by two months and a
4 bit. During that time -- I mean, you still at the
5 end are going to have to have -- you are going to
6 have a C of O that has to be amended because it has
7 got the wrong zoning and it has got the wrong -- you
8 know, even if the parking and loading issue -- does
9 it not behoove you to go back and apply again with
10 the proper information?

11 MR. GELL: Ms. King, I think you make a
12 very good point. We are certainly going to take
13 that into consideration. It would make a lot of
14 sense to correct it. Because we think that under
15 the situation as it exists, that the C of O would be
16 issued quite properly. That would make a lot of
17 sense.

18 CHAIRPERSON REID: And given the fact
19 that you presented to us the inconsistencies, then
20 going back to the DCRA and pointing them out, it
21 certainly would make a much better case for you to
22 come with the corrected C of O. Thank you. Time
23 line?

24 MS. PRUITT: If the hearing is on
25 October 6, just to make it easier for everybody --
26 Mr. Sher and anyone else -- I would also suggest

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1 that you serve it on the ANC -- be served by
2 September 22. That gives them a two-week period.

3 MS. KING: And again, could we please
4 schedule it at the beginning of the afternoon
5 session so that I can hear it?

6 MR. GELL: Thank you.

7 CHAIRPERSON REID: Mr. Hart, call the
8 second case of the day, please.

9 MR. HART: The next case is Application
10 16482 of the Catholic University of America,
11 pursuant to 11 DCMR 3108.1, for a special exception
12 under Section 210 for review and further processing
13 of its campus plan to permit the interim use of the
14 west of the Life Cycle Institute and east of Curley
15 Hall for temporary manufactured housing unit to
16 accommodate 96 students for a period not to exceed 3
17 years in an R-5-A District at premises 620 Michigan
18 Avenue, N.E. (Square 3821, Lot 44).

19 Would those persons intending to
20 testify, please raise your right hand?

21 (WITNESSES ARE SWORN.)

22 MS. KING: Madam Chair, given that this
23 appears to be an uncontested case, perhaps Ms.
24 Prince could just hit the high points. There is no
25 one here, I believe, in opposition, and the ANC is
26 supportive.

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1 CHAIRPERSON REID: Ms. Prince, we have
2 read the record and you can stand on the record for
3 the most part. It appears to be very clear-cut, and
4 it appears we also have received a letter --
5 actually, we have to waive it in -- from the ANC.

6 MS. PRINCE: Oh, you did receive it?

7 CHAIRPERSON REID: Yes, in support. So
8 we will waive that at the appropriate time. I had
9 just one question regarding the self-certification.
10 It is unsigned. Do you have a signed copy?

11 MS. PRINCE: Not signed by the Zoning
12 Office.

13 CHAIRPERSON REID: Signed by the Office
14 of the Zoning Administrator.

15 MS. PRINCE: We have had a longstanding
16 issue with the Office of Zoning Administrator on
17 whether they need to sign these self-certification
18 forms. They tell us that they don't need to sign
19 them because their signing them to essentially say
20 that they haven't read them. So they are saying it
21 is an act in futility.

22 MS. PRUITT: Madam Chair, may I shed
23 some light on this? Because I believe I spoke with
24 Ms. Prince and Mr. Lawson. It has been the staff's
25 policy not to sign them at DCRA. However, in
26 talking with Mr. Lorenko, the Zoning Administrator,

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1 it is their policy to. So the staff over there has
2 not been doing what they should be.

3 MS. PRINCE: Okay.

4 MS. PRUITT: They have been directed.
5 Now, I don't know if it has been filtering down.
6 But this office in concert with Mrs. Kress has the
7 assessments of Mr. Noble and Mr. Lorenko.

8 CHAIRPERSON REID: Mrs. Prince --

9 MS. PRINCE: We would be pleased to
10 secure the signature.

11 CHAIRPERSON REID: Secure the signature
12 and then submit it to staff and they will take care
13 of it.

14 MS. PRUITT: But this is an ongoing
15 problem. Particularly, this was probably filed much
16 sooner than we had the meeting.

17 CHAIRPERSON REID: Because I would
18 definitely like to see any document coming from over
19 there signed by someone.

20 MS. PRUITT: Exactly.

21 CHAIRPERSON REID: To at least give us
22 something --

23 MS. PRUITT: And we are also going to
24 revise it so that at the bottom it has licensed
25 attorney or --

26 CHAIRPERSON REID: Architect?

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1 MS. PRUITT: Right. And really someone
2 should indicate if they are a licensed attorney or
3 an architect and for what jurisdiction.

4 CHAIRPERSON REID: Okay. All right.

5 MS. PRINCE: I am pleased to secure the
6 signature. I'll be very brief. I am Alison Prince
7 of Wilkes, Artis, Hedrick and Lane, here today on
8 behalf of the Catholic University of America. We
9 are here today to seek approval of 26 manufactured
10 housing units that will remain on the campus for no
11 more than three years. The reason for the housing
12 units is a happy one. There has been a very
13 positive jump in enrollment at the University after
14 suffering a decline in the mid-1990's, and there are
15 plans underway, as we speak, to construct a new
16 dormitory. That case will be coming before you in
17 the fall. But the dormitory can't get built in time
18 to accommodate this jump in enrollment. The
19 University remains well below its cap of 7,500
20 students with 5,486 students, well under the FAR
21 limit of 1.8 with a .48 FAR. The University is a
22 role model to other universities in its relationship
23 with the community and the outreach that it has done
24 to not only the subject ANC but all the surrounding
25 ANC's on this project and really many other facets
26 of the University's operation. And for that reason,

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1 they have earned the ANC's support.

2 I have Sue Pervi, Vice President for
3 Administration here today. She is the one that is
4 down in the trenches with the community on a regular
5 basis. We have very detailed testimony that Sue has
6 prepared and I can submit that for the record. She
7 can hit the highlights.

8 MS. KING: Submit it for the record.

9 MS. PRINCE: Okay. I am pleased to do
10 that.

11 MS. KING: I would, however, like to ask
12 a question which may be in that material. This is
13 well insulated from any residential area as I see it
14 on the map. I mean, you are fortunate in that you
15 have, unlike some of your sister universities, have
16 an enormous amount of acreage, and this is not
17 anywhere near any other -- you know, any private
18 housing.

19 MS. PERVI: That is correct. And I have
20 an ongoing planning initiative for future housing in
21 the housing cluster, and the neighborhood sat on the
22 core master plan group from its inception.

23 MS. KING: Right.

24 MS. PERVI: So what we have done is we
25 have tracked the future planning and put this -- it
26 really borders on the future housing planning. So

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1 the community, in fact, was very supportive of this
2 particular location. We had brought it to the
3 community first in terms of location and they were
4 very happy with that. It is internal, in the heart
5 of the campus.

6 CHAIRPERSON REID: Ms. Pervi, in that
7 you have taken the time to come down and submit --
8 to give us briefing here, if you would like to say a
9 few words and take this time to give us the
10 highlights of your submission, it is up to you.

11 MS. PERVI: That is not really
12 necessary. I think I did try to provide this detail
13 that you could read at your leisure.

14 CHAIRPERSON REID: Yes.

15 MS. PERVI: I just wanted to say that we
16 have been very pleased. We have a very good
17 community relationship and our ANCs, our surrounding
18 community, has actually participated. I invited
19 them. They came to the site. They have seen
20 representative samples. And they're participating -
21 - just as a highlight, we have a partnership with
22 the Brooklyn Garden Club and they are going to be
23 participating with contributing to the landscaping
24 on the site. So we have really and truly kind of
25 made this a community project in the sense of our
26 local community. We have architectural

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1 professionals participating, and the students. So
2 it is actually a very exciting project for all
3 involved.

4 CHAIRPERSON REID: To your knowledge,
5 have you had anyone opposed to your campus plan --
6 this extension of the campus plan?

7 MS. PERVI: No. We provide regular
8 briefings to the community on a monthly basis. So
9 what we try to do is discuss -- if we think in
10 anticipation of any issues, we try to discuss that
11 ahead of time and come up with solutions before they
12 become problems.

13 CHAIRPERSON REID: It appears that you
14 are in compliance with Subsection 210 in all aspects
15 pertaining to noise, traffic, number of students and
16 all the other various -- if you can stipulate that
17 you are in compliance with all the various sections
18 of Subsection 210. Any questions, Board members?

19 MS. KING: No. I move that we waive in
20 the ANC report.

21 MR. PARSONS: Second.

22 CHAIRPERSON REID: Okay. And basically,
23 Ms. King, did you see there -- I was trying to flip
24 very quickly, but there was a quorum.

25 MS. KING: There was a quorum. There
26 was a duly advertised meeting. There was a quorum

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1 present. They voted to support. And specifically
2 it is the view of 5-C that the measure is consistent
3 with the important goal delineated in the
4 Universities approved campus plan, that is, to
5 provide interim and long-term housing accommodations
6 for undergraduate and graduate students. Further,
7 we see this move as presenting a win/win situation
8 for both the University as well as the rest of the
9 surrounding community. So that is a very strong
10 endorsement by the ANC.

11 CHAIRPERSON REID: They seem to be
12 elated. All right. There is no one here in
13 opposition to. There is no other persons in
14 supporting. Closing remarks?

15 MS. PERVI: In closing, I would simply
16 like to note so that you are aware, the self-
17 certification process is really working. I was
18 contacted by Catholic University in early May. We
19 filed this application on May 18. And with your
20 favorable action today, this entire process will
21 have been completed in three months, which I think
22 is remarkable, having never completed a campus plan
23 related case in less than six months. So we would
24 appreciate your prompt action so that these can be
25 finalized and occupied in October.

26 MS. KING: I might just mention that it

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1 appears to me that Catholic and Galludet have such a
2 good relationship and on ongoing dialogue with their
3 neighbors, and that is one reason that they don't
4 have the problems that some of the other
5 universities have, and I applaud you for that.

6 CHAIRPERSON REID: Board members, I
7 would move approval of this application.

8 MS. KING: Second.

9 CHAIRPERSON REID: It appears that they
10 have certainly met the requirements for their campus
11 plan under Section 210. There does not seem to be
12 any adverse impacts with regard to this particular
13 application, and it does not seem to impair the
14 intent or integrity of the zoning map or plan.

15 MS. KING: Do your relations --

16 CHAIRPERSON REID: Second?

17 MS. KING: Yes, I seconded before. Do
18 your dialogue with the neighbors -- is the three
19 years important? Do you want -- do we need to put a
20 stipulation that this is for three years only?

21 MR. PERVI: I don't think -- in the
22 community, we are working on a long-range housing
23 plan. In fact, we have enrollment management. We
24 are not interested in uncontrolled growth.

25 MS. KING: No.

26 MS. PERVI: And what I have done with

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1 the community is I think it is important that they
2 understand the University in a broader sense, not
3 just when we have --

4 MS. KING: No. But what I am saying is
5 that we sometimes put conditions on our orders, and
6 should we condition this approval for a three-year
7 period? Is that comfortable for you? A four-year
8 period?

9 MS. PERVI: If you don't need to
10 condition it, obviously that would be the most
11 optimum.

12 MS. KING: I mean, that would mean that
13 you could have it in perpetuity, and I am not sure
14 that that is --

15 MS. PERVI: No, that is not our
16 intention. MS. KING: Your intention or
17 the communities intention.

18 MS. PERVI: No, that is not our
19 intention.

20 MS. KING: So let us put a number of
21 years on it that is --

22 MS. PERVI: Comfortable.

23 MS. KING: That is within the most
24 reasonable. Five years?

25 MS. PERVI: Well, I think four. They
26 have talked about four or five years as being

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1 acceptable.

2 MS. KING: Okay, five?

3 MS. PERVI: Five would be fine. Ms.
4 Prince, do you have any comments?

5 CHAIRPERSON REID: All in favor? Aye?

6 ALL BOARD MEMBERS: Aye.

7 CHAIRPERSON REID: Opposed?

8 MS. PRUITT: Staff will record the vote
9 as 3 to 0 to approve for five years. The motion
10 made by Ms. Reid and seconded by Ms. King.

11 CHAIRPERSON REID: You should have your
12 order in about two weeks, Ms. Prince.

13 MS. PERVI: Thank you very much.

14 CHAIRPERSON REID: The next case,
15 please?

16 MR. HART: Our next case is --

17 CHAIRPERSON REID: The last case of the
18 morning.

19 MR. HART: Application No. 16474 of
20 Steve Choi on behalf of the Capital University of
21 Integrated Medicine. Pursuant to 3107.2 for a
22 variance under Section 330.5, to use the premises as
23 administrative offices on the first and second
24 floors in an R-4 District at premises 1131 8th
25 Street, N.E., Square 908, Lot 40. This is
26 application 16474.

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1 UNKNOWN SPEAKER: I beg your pardon. I
2 think the application number was read wrong. It is
3 16474 and you said 72.

4 MR. HART: Those persons who are
5 planning to testify, please raise your right hand.

6 (WITNESSES ARE SWORN.)

7 MR. MERKLINGER: Madam Chair and members
8 of the Board, my name is Jim Merklinger. I am an
9 attorney and I represent Capital University of
10 integrated medicine. We have filed an application.

11 CHAIRPERSON REID: I am sorry, your
12 name?

13 MR. MERKLINGER: Jim Merklinger.

14 CHAIRPERSON REID: Mr. Merklinger,
15 please project your voice. We don't have a sound
16 system, so you have to speak loudly.

17 MR. MERKLINGER: I am actually told I am
18 too loud a lot.

19 CHAIRPERSON REID: I can barely hear you
20 myself.

21 MR. MERKLINGER: We are filing an
22 application to use an office building, which is in
23 an R-4 residential. It is a house and we would like
24 to use it for administrative offices. It is located
25 directly across the street from Galludet University.
26 It sits on the corner of 8th Street and Florida

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1 Avenue. The building is actually -- it has been
2 approved as far as it has been kept in an
3 professional manner. We have cleaned it up. It is
4 used for only administrative purposes. What the
5 University is -- Capital University is a program for
6 doctors in an advanced program. They don't actually
7 reside on the premises. They fly in once a month
8 for classes. So there are no students coming into
9 the office, and the classes themselves are held at
10 Galludet in the Kellogg Center. They have a really
11 nice conference center located on the campus.

12 MS. KING: I am sorry, this is
13 continuing education for doctors is what it is?

14 MR. MERKLINGER: It is more of an
15 advanced degree for doctors. It is integrative
16 medicine. They teach them what they describe as
17 different modalities in different areas of medicine
18 so that it is built on the premise of a team
19 approach to things. There is not any one area of
20 medicine. Someone may need nutritional needs as
21 well as a bone set. Doctors learn different areas.
22 It is expanding the medical knowledge.

23 MS. KING: And the students are all
24 M.D.'s, is that correct?

25 MR. MERKLINGER: M.D. or different areas
26 of medicine, yes, they are.

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1 MS. KING: Madam Chair -- and perhaps
2 this is a question for staff -- the last
3 organization which we have been dealing with which
4 calls itself a University, we asked for its master
5 plan.

6 MS. PRUITT: No, the last one -- the
7 National Braddock University was reviewed under
8 Section 206 not 210.

9 MR. MERKLINGER: We are not -- there is
10 no campus. This is only an administrative office.
11 No students reside here. The actual facilities are
12 across the street. That is what makes the building
13 itself ideal. There are five to six administrative
14 staff in the building at any given time. They work
15 normal business hours, 8:00 to 5:00 p.m.

16 MS. KING: And none of the students ever
17 come in to register or anything?

18 MR. MERKLINGER: No, they are not. They
19 register via mail. There is not a walk-in area. I
20 mean, someone could walk into the building, of
21 course, but it is not set up that way. Students
22 come from all around the country. It is not
23 something where you would just drop-in. They know
24 about the program. As I say, they are
25 professionals. One of the reasons that it is held
26 once a month is because they have practices. They

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1 are working students. So they come into the area.
2 But this is for more -- as I say, administrative and
3 keeping records. Sending out information as
4 requested and answering any needs of the university
5 itself. It is a non-profit. It has been there for
6 just over two years. What they are asking for --
7 and they have met with the ANC and found that there
8 is not really an impact upon the neighborhood.
9 Members don't take up parking spaces. Most of the
10 people who actually work there take public
11 transportation to get there. As I said, they are
12 only there during working hours.

13 MS. KING: Now you mentioned in your
14 submission that the staff will park in the Galludet
15 parking lot. Do you have a formal arrangement with
16 Galludet for your people to park there?

17 MR. MERKLINGER: We have a pay parking
18 lot across the --

19 MS. KING: Oh, they have a paying
20 parking lot?

21 MR. MERKLINGER: Yes, they do. A double
22 -- it is like a three-story structure. And as I
23 said, most of the staff doesn't drive anyway.

24 MS. KING: But those that do pay for
25 parking?

26 MR. MERKLINGER: Yes, off-street. There

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1 is public parking on the street now. My
2 understanding is actually they are going to change
3 that. But right now, there is public parking. They
4 are going to change it so it requires a sticker and
5 limited two-hour parking. But as of today, it is
6 open to anyone to park there.

7 MS. KING: There is no residential
8 parking permits required?

9 MR. MERKLINGER: That is my
10 understanding, yes.

11 CHAIRPERSON REID: Well, can you clarify
12 a couple of things for me? Currently, the building
13 is operated as a school building?

14 MR. MERKLINGER: Administrative offices
15 for -- no classes are taught in the building.

16 MS. KING: I think what the situation is
17 is that they purchased or leased --

18 MR. MERKLINGER: They have leased the
19 building.

20 MS. KING: Leased the building, moved
21 in, and then discovered that they needed zoning
22 approval to have an office in the building.

23 MR. MERKLINGER: That is correct. It is
24 our understanding --

25 MS. KING: And that is why they are
26 before us.

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1 CHAIRPERSON REID: Okay. Something that
2 I read said you have classes once a month for three
3 days -- three-day segments of classes.

4 MR. MERKLINGER: Yes, they do. Not in
5 the administrative building. The reason we have
6 that building right where we picked that location is
7 that the classes are at the Kellogg Center, which is
8 a conference Center run by Galludet University. It
9 is directly across the street at the campus.

10 CHAIRPERSON REID: The classes are
11 across the street?

12 MR. MERKLINGER: Yes, they are.

13 CHAIRPERSON REID: What currently goes
14 on in this building?

15 MR. MERKLINGER: It is a paper office.
16 It is for student records.

17 CHAIRPERSON REID: No. What I am asking
18 you is you are currently, as Ms. King was saying --
19 that is what I was trying to get at. It is just
20 that you are currently using it as such -- as the
21 office building?

22 MR. MERKLINGER: As an administrative
23 office.

24 CHAIRPERSON REID: Illegally?

25 MR. MERKLINGER: Yes.

26 CHAIRPERSON REID: And now you want to

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1 legitimize the operation, as it were.

2 MR. MERKLINGER: What happened is that
3 they leased the premises about a year ago and they
4 did not realize that they could not use it for an
5 office. CHAIRPERSON REID: Okay.

6 MR. MERKLINGER: They are currently
7 going through the D.C. licensing.

8 CHAIRPERSON REID: Okay. I see. How
9 did you -- how is it that you -- no one told you
10 when you leased it that it was improper? An
11 improper use? I mean, how did you then determine
12 that you did have to get one?

13 MR. MERKLINGER: Well, they are going
14 through a licensure with the education review, and
15 part of -- just one of the normal things is a
16 certificate of occupancy. And it turned out that
17 that was zoned for residential. So they really --

18 CHAIRPERSON REID: What was there
19 before?

20 MR. MERKLINGER: What was -- it is
21 housing -- I mean, family.

22 CHAIRPERSON REID: Okay. It is zoned R-
23 4?

24 MR. MERKLINGER: Yes, it is.

25 CHAIRPERSON REID: Okay.

26 MS. BAILEY: Madam Chair, I just wanted

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1 to remind the Board that this is a use variance.
2 Once the use has been changed for this building, it
3 will always be used for that purpose unless it is
4 changed back before the Board.

5 MS. PRUITT: The use runs with the
6 property is what she is saying.

7 CHAIRPERSON REID: Yes. We understand
8 that. Well, you are asking for a variance, you
9 know. And as such, you have to make a case for a
10 use variance. You have indicated in your submission
11 that there is an undue hardship because the building
12 is less than 100 feet from Galludet University.
13 That is your undue hardship?

14 MR. MERKLINGER: There is no undue
15 hardship as far as changing the structure. Nothing
16 needs to be changed to the building or the physical
17 location. Part of what happens when we filed is we
18 requested this special use, just a change for that
19 purpose. The office next door said that this was
20 the correct procedure to use. What we want is, as I
21 said, just use it for the administrative office.

22 CHAIRPERSON REID: Then you said that
23 the hardship would come about as a result of having
24 to relocate.

25 MR. MERKLINGER: Yes. I realize that
26 under the regulations of hardship -- if the lot

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1 itself, anything needed to be changed or altered in
2 the physical location. There is no hardship as far
3 as to the structure. We actually don't need to
4 change anything on the building.

5 MS. KING: No. You misunderstand the
6 meaning of that. The hardship is why would it be a
7 hardship for the owner to continue the permitted use
8 of the property, which is residential.

9 CHAIRPERSON REID: To not continue.

10 MS. KING: To not continue. I mean, why
11 would it be a practical difficulty or a hardship.

12 CHAIRPERSON REID: In this instance, it
13 is undue hardship or perhaps a difficulty as opposed
14 to area variance.

15 MR. MERKLINGER: But as I said, there is
16 no hardship as far as the building.

17 MS. KING: Don't say that. As I was
18 trying to point out to you, the thing is that you
19 don't have a basis for your --

20 MR. MERKLINGER: But I am not trying to
21 misrepresent anything to you. What I am saying is
22 to fulfill this or to make this happen --

23 MS. KING: How long was the building
24 empty before you leased it? Was it empty when you
25 leased it?

26 MR. MERKLINGER: That I would have to

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1 ask Mr. Choi, the owner of the property.

2 MS. KING: And he is behind you, is he
3 not?

4 MR. MERKLINGER: Yes, he is.

5 MS. KING: And he is sworn in. Maybe he
6 could come and testify.

7 CHAIRPERSON REID: Okay. Are you all
8 testifying with the applicant?

9 MS. KING: They all got sworn in.

10 CHAIRPERSON REID: Come forward. Come
11 forward.

12 MR. MERKLINGER: As I said, what we are
13 saying is that they are in the office and they have
14 been there for a year. They would like to continue
15 using it. It is a great location. It sits right
16 across the street.

17 MS. KING: None of that is germane to
18 the argument that -- making your case -- that you
19 have to demonstrate in order to gain a variance.

20 MR. MERKLINGER: I understand. We were
21 told that there are three prongs to the variance.

22 CHAIRPERSON REID: Exactly.

23 MR. MERKLINGER: Exactly. As far as the
24 hardship, actually what we have is that what I am
25 saying is the hardship is more a financial hardship
26 -- when the regulations talk about hardship to the

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1 land use. I am saying to grant this, you don't have
2 to change anything to the structure. It is not
3 going to affect the integrity of the block -- the
4 physical structure. The use of the land, we don't
5 have to do anything to change that. That, in
6 itself, is not a hardship. But I am saying that
7 under anything that we consider a hardship is you
8 would have to make these people move out of a
9 building that works very well and does not have any
10 adverse effect upon the community. If anything, it
11 helps improve the area.

12 MS. KING: What was the building used
13 for before you leased it, Mr. Choi?

14 MR. CHOI: I am the owner of that
15 building or house.

16 MS. KING: Identify yourself by name and
17 your home address.

18 MR. CHOI: My name is Steve Choi.

19 MS. KING: Sit down.

20 MR. CHOI: I own the property. I bought
21 it back in late 1980 as an investment property. It
22 was infested with I guess drug dealers inside and I
23 got a loan and renovated the whole place, gutted it
24 out. I could not find a tenant, but luckily I had
25 an employee who was living there and taking care of
26 it.

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1 MS. KING: How long was it without a
2 tenant?

3 MR. CHOI: In early 1990's, about two
4 years. I had a break-in several times -- on several
5 occasions. I noticed one thing, if you have
6 somebody occupy, they will not break it in.

7 MS. KING: They had what?

8 CHAIRPERSON REID: If someone is
9 occupying it.

10 MS. KING: Oh, I see.

11 MR. CHOI: Yes, if someone would occupy
12 it, they would never break it in. Integrated
13 Medicine, I think they leased it almost a year and a
14 half ago from me. Ever since then, the building has
15 been improved exposure-wise. The painting has been
16 maintained and it is more lively, I guess, in a
17 sense. The hardship I think that Jim was saying is
18 that definitely it would be a hardship because it
19 would be empty. And it would be a hardship for them
20 because it is right across the street from Galludet
21 University. If they have to move somewhere else, I
22 definitely think it would be a hardship for their
23 employees who are associated with the place. The
24 parking matter-wise, they have paid parking, like
25 three stories across the street. So that is no
26 problem.

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1 CHAIRPERSON REID: But the gist of this
2 is that this is an R-4 as it is zoned. This is
3 residential.

4 MR. CHOI: That is right.

5 CHAIRPERSON REID: It is across the
6 street from Galludet?

7 MR. CHOI: Right across from the gate.

8 CHAIRPERSON REID: Okay. Now, as such,
9 if someone just wants to move into residential
10 housing and make it an office, it would have no --
11 that would run afoul of our zoning regulations.
12 That is why we have zoning regulations. Now, if in
13 fact someone wants to use a property that is zoned
14 in one district in another way, then that is why we
15 have variances and special exceptions. But in order
16 to apply that, you have to meet the three-prong
17 test. So far, I have not seen any validity in your
18 making a case for us to give you a variance.
19 Because what you are saying is not undue hardship.

20 MS. KING: Mr. Choi has said that he
21 fixed it up as a residency and rented it for two
22 years and was unable to do --

23 CHAIRPERSON REID: It can't be economic.
24 It has to be inherent in the land.

25 MS. PRUITT: For a use variance, it can
26 be economic.

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1 CHAIRPERSON REID: Okay. My
2 understanding was that it could not be economic.

3 MS. PRUITT: It can be both. Now for a
4 use variance, it can be economic hardship. The fact
5 that if Mr. Choi -- is that correct?

6 MR. CHOI: Yes, ma'am.

7 MS. PRUITT: Was unable to lease his
8 property as residential as the zone is, that could
9 be a facet in granting a use variance.

10 CHAIRPERSON REID: Okay.

11 MR. CHOI: Also, Madam Chairman --

12 MS. PRUITT: But he would need to
13 demonstrate that he was not able to or that it was
14 very difficult in doing so.

15 CHAIRPERSON REID: All right.

16 MR. CHOI: Also, Madam Chairman, I
17 talked with the Zoning Board downtown, I guess, and
18 they told me owner-occupied can have any office you
19 want. Because I am not occupying that, I cannot get
20 the special use permit. If I were to occupy the --

21 MS. PRUITT: Right. You can get a
22 certificate of occupancy --

23 CHAIRPERSON REID: Oh, owner/occupant.

24 MR. CHOI: Owner/occupant, that is
25 right.

26 CHAIRPERSON REID: Let's look at

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1 uniqueness. I did garner from looking at the plat
2 map or at the Sandborne map that it appears that you
3 are right here on this corner.

4 MR. MERKLINGER: Yes, that is correct.

5 CHAIRPERSON REID: And it appears that
6 you are triangularly shaped. You do have an
7 irregular shape or a unique shape compared to the
8 regular -- the other shapes of the properties on
9 that particular square, which appear to be
10 rectangular. I am helping you to make a case here.

11 MR. MERKLINGER: Yes. There is only one
12 building adjacent to the property, the neighbor.

13 CHAIRPERSON REID: Well, the idea is
14 that there has to be something unique or unusual
15 about your particular property -- it is irregular or
16 it is narrow or shallow or something that would give
17 us the basis for -- you could fill in that first
18 category. And it does appear that it is irregularly
19 shaped. That makes it unique to the rest of the
20 properties on the block or on the square.

21 Now let's go to undue hardship. So we
22 are saying, Ms. Pruitt-Williams, is that in this
23 instance, if in fact the owner has not been able to
24 lease the property and has not been able to for some
25 time and it caused a financial hardship as a result,
26 then that could be the basis.

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1 MS. PRUITT: That could be the hardship.

2 CHAIRPERSON REID: Okay. All right.

3 MS. KING: No questions. I would like
4 to hear from the ANC.

5 CHAIRPERSON REID: No, let's look --
6 before that, let's go to adverse impacts. Have you
7 had any feedback from the neighbors or the abutting
8 property owners in regard to your application when
9 you posted it?

10 MR. MERKLINGER: I believe Mr. Pernell
11 from the ANC -- we have not had any negative impact.
12 But also, they ANC will approve --

13 CHAIRPERSON REID: In regards to
14 parking, traffic, noise or the like? You have not
15 had any --

16 MR. MERKLINGER: No. It is actually a
17 pretty quiet street.

18 CHAIRPERSON REID: Okay. And do you
19 feel that your application -- granting your
20 application will not impair the -- given the relief
21 that you are asking for would not impair the intent
22 or integrity of the zoning map or the zoning
23 regulations?

24 MR. MERKLINGER: Yes, we do.

25 MR. PARSONS: Madam Chair, I wanted to
26 ask Mr. Choi a question or two. Mr. Choi, this

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1 structure seems to be larger than the others in the
2 neighborhood.

3 MR. CHOI: It is.

4 MR. PARSONS: How many units did you
5 have in this building after you renovated?

6 MR. CHOI: What we did is we went in and
7 gutted it out. We did central air conditioning where
8 before you had a boiler system that had a oil tank
9 in the basement. So we -- in a sense, we left the
10 structure as is, but the operating HVAC heating and
11 also the electrical system had to be rewired because
12 the building is of such an old age.

13 MR. PARSONS: So you were trying to
14 lease this or rent this as a single family home?

15 MR. CHOI: Right.

16 MR. PARSONS: How many bedrooms does it
17 have?

18 MR. CHOI: Well, it has got a living
19 room and also a kitchen -- well, actually three and
20 a half bathrooms and four rooms and a living room
21 and a dining room.

22 MR. PARSONS: Would you say this is a
23 lot larger than the other homes in the neighborhood?

24 MR. CHOI: I think because this is a
25 corner lot -- if you look at it in the front, it is
26 not. But this thing goes around the corner. You

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1 know what I am saying? So you could say that it is
2 larger than the other units.

3 MR. PARSONS: I am trying to determine
4 is the difficulty you had renting this have anything
5 to do with its oversize for the neighborhood, that
6 is --

7 MR. CHOI: No. The difficulty is
8 because of what I put in investment-wise, and I want
9 to meet the mortgage payment. And most things in
10 that area do not meet that figure. As a matter of
11 fact, after the renovation, I had a hard time
12 kicking the tenant out. Once they moved in, they
13 would not pay me the rent. As a matter of fact,
14 they vandalized the building when they left.

15 MR. MERKLINGER: Madam Chair, pointing
16 out that it does sit on the corner lot and there is
17 the traffic of the avenue right there and also in
18 the front, as opposed to anyone -- I don't think you
19 would move in if you had children or anything. You
20 have a lot of traffic there and it is exposed to the
21 public as far as around the corner street.

22 CHAIRPERSON REID: I know that area very
23 well. What made you purchase -- for the record, why
24 did you purchase the property?

25 MR. CHOI: I have business in the
26 market. At that time back in the mid-1980's, real

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1 estate was really booming. I had some money that I
2 made from business and I was thinking from time to
3 time when it is snowing or in the wintertime, I
4 could not go to Virginia and I would like to live
5 there. But I found out once we renovated it, that
6 we had break-ins and I was kind of afraid to live
7 there.

8 CHAIRPERSON REID: You said that the
9 area was drug-infested?

10 MR. CHOI: Yes, exactly.

11 CHAIRPERSON REID: I think that even
12 though that is not a basis for granting a variance,
13 but when a property can be brought into service and
14 to offset any kind of illicit activities around it,
15 that is in my opinion good for the city. All right.
16 Any other comments?

17 MS. KING: Just from Pernell.

18 CHAIRPERSON REID: ANC, please? Mr.
19 Pernell? I am sorry, sir? Mr. Parson just pointed
20 out, were you -- did you wish to say something? I
21 wasn't aware.

22 MR. CHADWICK: Me?

23 CHAIRPERSON REID: Yes.

24 MR. CHADWICK: No. I am Alan Chadwick.
25 I am the CEO for the University. If there were
26 hardship questions, I could explain those.

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1 MR. PERNELL: Good morning, Board
2 members and members of the audience. My name is
3 Daniel Pernell, III, and my last name is spelled P E
4 R N E L L. I am chairman of the 6A Commission on
5 Capitol Hill, and I am here on behalf of Wanda
6 Steven Harris in the single member district of 1131
7 and her ANC single member district is 6A09. Ms.
8 Harris and the 6A Commission was not aware of this
9 facility in the area. We assumed that it was a
10 residential home, and when we did find out, we
11 started inquiring about this facility. I have
12 witnessed for many years living in that area that
13 this house, as the gentleman has said, was in bad
14 shape and was a drug-ridden facility, and he came in
15 and spruced it up and has gotten some occupancy in
16 it. But the real concern is that the property has
17 made an improvement to the Northeast community where
18 we have been working so many years in improving that
19 Northeast corner of New York Avenue and Florida
20 Avenue, and the facility at 1131 being revamped has
21 done just that for the community. And we are very
22 proud that someone did come along and do something.

23 What we were concerned about with that
24 facility there is that it was used as an office
25 facility and that we felt that the 6A and the single
26 member district of Ms. Wanda Harris felt that indeed

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1 the owner of this facility was and is in violation
2 of the zoning code of the R-4 residential area.
3 Nevertheless, the ANC conducted its ANC zoning and
4 license subcommittee on July 7, 1999, whereas the
5 following results after hearing from both parties is
6 that the 6A Commission voted to support Commissioner
7 Wanda Harris in favor of permitting the premise at
8 1131 8th Street, N.E., to be used as an
9 administrative paper office only, and not to be used
10 as a medical facility or as a living quarters. At
11 that time, the present facility would come up for a
12 one-year review under the purview of the 6A
13 Commission and the single member district of Wanda
14 Harris for review for an extension after that
15 period.

16 Ms. Harris wanted to emphasize that the
17 facility is to be used for paper use or
18 administrative use only. It is not to be used for
19 sleeping quarters. And that the staff who use that
20 facility are indeed and will be parking on the
21 facility at Galludet only and not in the R-4
22 community, whereas it would impact that community.

23 Also, she feels that the delivery trucks
24 that are delivering materials to that facility
25 should be parked in the required 15-minute timing
26 and loading and unloading there at that facility.

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1 Madam Chair, we also heard from a
2 constituent, Mr. Ricky B. McLain of 1122 8th Street,
3 N.E., Washington, D.C. 20002. We had a conversation
4 with him out in the hallway. And I want to provide
5 for the record what he has had -- the disadvantage
6 impact on the community there as far as Maryland
7 license plates parking at this facility at 1131. I
8 told him that we would put on the record here that,
9 and they did say before us on July 7 that the staff
10 there will be parking on Galludet property and that
11 they will not be parking in the community area. We
12 were very satisfied with that and we hope that this
13 Board holds them to that. And that is for the
14 record. It is just some vehicles illegally parked
15 extended overnight. Some have Maryland license
16 plates in the area and that is one of the great
17 concerns that the ANC and single member district --
18 that is also my single member district also. I am
19 on the borderline of Ms. Wanda Harris. She is on
20 one side of 7th Street and I am on the other. So we
21 share the same views in this.

22 Again, to end my statement, we don't
23 object to this facility as long as it stays as a
24 paper administrative office and they obey the wishes
25 of the residents in the area by not parking in front
26 of their houses and using the parking facilities

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1 provided to that facility at 1131 at Galludet
2 University. We also want the Board to make note
3 that this facility opened up without the concern and
4 following the regulations of the D.C. zoning and
5 license to be permitted to be there and
6 disrespectful to the single member district ANC, Ms.
7 Wanda Harris, and the 6A Commission. With that, I
8 end my statement.

9 MS. PRUITT: Excuse me, Mr. Pernell, do
10 you have a statement from the ANC with the vote of
11 the quorum?

12 MR. PERNELL: Yes, you should have it
13 before me.

14 MS. KING: It is in our file.

15 MR. PERNELL: Right.

16 MS. KING: We've got it.

17 MR. PERNELL: We had a quorum of I
18 believe -- it was unanimous.

19 MS. PRUITT: I just wanted to put it in
20 for our records.

21 MR. PERNELL: We definitely have it for
22 the record. You know, 6A. We definitely try to be
23 on -- the problem that 6A is having is we have a
24 number of BZA applications and we had to explain to
25 our constituents in the community and to the
26 applicants that we have a responsibility as a

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1 volunteer body of the D.C. Government to respond to
2 BZA actions, and therefore we made sure that our
3 meetings were public with announcements in and
4 around the 200 feet required and even beyond that to
5 make sure that everyone was covered and that when we
6 made a decision on this property that it would be
7 fairly done, and I think we did so.

8 MS. KING: You have how many members on
9 your Commission, Mr. Pernell?

10 MR. PERNELL: There are 14 Commissioners
11 presently on board. When we had a quorum that day,
12 we had 8 members present. The law requires that
13 half of 14 is 7 and one over would be 8.

14 MS. KING: What you attached here said
15 that Doris Wallace was not present and there were
16 only 7 people there.

17 MR. PERNELL: You don't lose a quorum
18 when someone leaves, madam. The quorum is still
19 there. Ms. Wallace was there, but she was
20 discussing a problem with constituents at the
21 meeting. What I am saying is that she wasn't
22 present when we voted. But she was there. She was
23 a part of the quorum. And you don't lose a quorum
24 once the quorum is established?

25 CHAIRPERSON REID: Is that -- really? I
26 need clarification on that.

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1 MS. KING: No, don't go there. Don't go
2 there.

3 MS. PRUITT: Well, even if you interpret
4 either way, they still would have maintained it.

5 MS. KING: Don't go there.

6 MR. PERNELL: And let me make it clear
7 for the record, too, Ms. Pruitt and members of the
8 Board, that this was a zoning and license
9 subcommittee combined with a regular -- I called a
10 special meeting on that day because we had a problem
11 with the 6A Commission at the same time. And to
12 keep from having a backlog on the BZA responding, we
13 also at that regular meeting -- we had a combined
14 regular meeting and we had a special meeting with
15 the zoning and license. So, therefore, some members
16 could stay and some couldn't stay. Ms. Doris
17 Wallace did stay, but she was in another area. So I
18 wanted to be fair on the record by saying that she
19 was not present at voting on these issues. But if
20 you notice, we had several applications that day and
21 she did vote on those applications.

22 CHAIRPERSON REID: Mr. Parnell, I just
23 had a question regarding the aspects of your report
24 where you said that you would not like to see this
25 building used for a medical facility or living
26 quarters. It is okay as long as it is used as the

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1 office building. But you said that for the special
2 use permit, it will be up for review in one year.
3 And that time, the applicant will come before the 6A
4 Commission and single member district commissioner
5 and request an extension of time for special use in
6 an R-4 community, which is required by D.C. law.
7 Could you elaborate on that? Because I am not real
8 familiar with that.

9 MR. PERNELL: We felt that anyone in R-4
10 is at the highest resolution you get for a
11 community. And anyone that is coming in with an
12 administrative business like this before us now is
13 asking the ANC and the single member district for
14 special use to exist in that area. And we felt that
15 since they came in illegally -- they were operating
16 without the permission of the BZA and without the
17 knowledge of the single member ANC and the purview
18 of the 6A Commission, and we felt that they should
19 be bound by these restrictions.

20 MS. PRUITT: Madam Chair?

21 CHAIRPERSON REID: Yes.

22 MS. PRUITT: If I am understanding Mr.
23 Pernell correctly, that would be an agreement
24 between the ANC and the applicant and the Board has
25 nothing to do with it. If the Board grants a use
26 permit or a use variance, it runs with the land,

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1 regardless of what the ANC and the applicant has
2 worked out.

3 CHAIRPERSON REID: Right. Mr. Pernell,
4 you are familiar with the fact that the use variance
5 runs with the land.

6 MR. PERNELL: Oh, yes.

7 CHAIRPERSON REID: But the aspect of the
8 review -- even if they come for review and you
9 stated that you are not pleased with some type of
10 adverse impact that has come about as a result of
11 the variance being given, what recourse do you have?

12 MR. PERNELL: Well, you know by law now
13 as of 1999, ANC and community members have great
14 weight. In the sense that we wanted to use our
15 great weight if this facility and the use of this
16 facility becomes a great impact on the community as
17 far as impact on parking, the staff is not merging -
18 -

19 MS. PRUITT: Excuse me. I just want to
20 try to understand you. Great weight in reference to
21 the Board's decision or great weight in reference to
22 what?

23 MR. PERNELL: Great weight in what the
24 community members want in their community if there
25 is an adverse impact.

26 MS. PRUITT: Okay, but Mr. Pernell, once

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1 this is -- if this is approved, the application --
2 it is done. The applicant will have the right
3 forever to use this as an office building.

4 CHAIRPERSON REID: Let me see if I could
5 give you some comfort level at the ANC. What we
6 customarily do is if in fact there is some concern,
7 then we can -- I think we can put conditions.

8 MS. PRUITT: Conditions are generally
9 under special exceptions.

10 CHAIRPERSON REID: Oh, but not with the
11 use?

12 MS. PRUITT: Right. It is either black
13 or white.

14 CHAIRPERSON REID: You can't condition
15 it. What I was going to suggest was that we would
16 condition it for like 3 or 5 years to come back.

17 MR. PERNELL: Well, hypothetically
18 speaking in reference to the Board, what you are
19 saying is true. But what I said in great weight is
20 what the community wants -- taxpaying people. These
21 people who use 1131 are transit people. They are --

22 MS. PRUITT: I understand that, Mr.
23 Pernell. I --

24 MR. PERNELL: Can I finish my statement?

25 CHAIRPERSON REID: Please, let him
26 finish. Give him the floor.

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1 MR. PERNELL: What I am saying is that
2 we have a right in our community to scrutinize any
3 business that comes here. These people come and go
4 and they do not put any money into our budget except
5 for the use that they use it from 8:30 to 5:30 p.m.
6 All I am saying is that we have a nice agreement
7 with these people. We weren't hostile with them.
8 We came to an agreement. They have agreed to come
9 before us within the year and I will stick to that
10 and I know they will. I am foreseeing that -- I
11 appreciate the facility there. What I don't like is
12 the owner taking the responsibility of not coming to
13 the ANC and single member district and discussing
14 this with us so we can have a medium. We have two
15 civic groups -- Near Northeast Citizens Against
16 Crime and Drugs and the Public Interest Civic
17 Association -- sitting right on that borderline. We
18 have a community council right at Galludet that we
19 deal with. And I am on that board and this is what
20 we want. We want a relationship with these people.
21 Now, we didn't have any opposition when we threw out
22 what we wanted in our subcommittee on July 7. And I
23 think we came -- we could have been very hostile to
24 the owner of this facility, but we weren't. And
25 clearly, as they have said here today, they were
26 operating without having permission by the zoning

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1 regulations of the District of Columbia.

2 MS. PRUITT: Madam Chair --

3 CHAIRPERSON REID: Excuse me, Ms. King?

4 MS. KING: I would like to hear what Ms.
5 Pruitt-Williams has to say, because I think once we
6 give a use variance, that is in perpetuity.

7 MS. PRUITT: My concern is that while
8 Mr. Pernell's issues are valid concerns, this is not
9 the correct place for them to be aired because you
10 have no jurisdiction over that. When you issue a
11 use variance -- I mean, if you were to issue a use
12 variance, it runs with the land. The applicant then
13 has the right in perpetuity to use that property
14 that way. Any other agreements that are done
15 between the applicant and the ANC or any civic
16 associations are between them and cannot -- the BZA
17 cannot enforce them.

18 CHAIRPERSON REID: I think I understand.
19 I think what the concern is --

20 MR. PERNELL: It --

21 CHAIRPERSON REID: Let me.

22 MR. PERNELL: Go ahead.

23 CHAIRPERSON REID: They have now
24 established a rapport with the school --

25 MR. PERNELL: Galludet University.

26 MS. PRUITT: With the University and

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1 Galludet.

2 CHAIRPERSON REID: With the University
3 and Galludet. So what they are asking -- and this
4 would be -- this is an agreement between you and
5 them to come back after a year, and this agreement
6 would also stipulate, I suppose -- again, it
7 wouldn't be a part of us -- but contained therein
8 you would stipulate that in the event there are any
9 adverse impacts that they would be ameliorated as
10 quickly as possible, and they would agree to do so.
11 Is that what you are saying?

12 MR. PERNELL: Right.

13 CHAIRPERSON REID: But that would not be
14 -- that is between -- and I see here in your letter
15 now that you didn't say that the BZA would do it.
16 You are just saying that you want that as a part of
17 your agreement with them.

18 MR. PERNELL: Absolutely. And the 6A
19 Commission has been very fair to the businesses
20 coming to the District of Columbia.

21 CHAIRPERSON REID: Sure.

22 MR. PERNELL: We want them to respect
23 our community like we would their business. You
24 know, if President Jordan would have heard of their
25 existence being here illegally, he would have been
26 very upset. Because he had an on and on

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1 relationship with us. Up until yesterday, we had a
2 ribbon-cutting ceremony. So this would be very
3 upsetting to him for them to come before us like
4 that. But nevertheless, the community wants to move
5 forward -- the Near Northeast Community wants to
6 move forward and we want these people only to
7 respect our community and by that coming before us.
8 And there should be some restrictions on the owner
9 that does this. It is not the people who are
10 occupying this facility. It is the owner who comes
11 before us. And there is great weight in the
12 community.

13 MS. PRUITT: I understand that, Mr.
14 Pernell.

15 MR. PERNELL: I am not disputing you. I
16 am just making a -- what I just wanted to say is
17 that to make it clear while they are here because
18 these people don't meet before us. They met with us
19 only because the application came before us. They
20 won't attend our civic meetings and our ANC
21 meetings. So I want to make it very clear for the
22 record that if this facility in the far future
23 becomes an adverse negative impact on the community,
24 we have a mechanism set up to have them closed down
25 under DCRA and with the police department. What we
26 are saying is we want to avoid that by having this

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1 relationship with them. And, therefore, that is why
2 we are not contesting their application. We are
3 just asking for the terms that you see in our
4 letter. And I will end it at that before we get
5 into a whole lot of other stuff.

6 CHAIRPERSON REID: Actually, Mr.
7 Pernell, I think that --

8 MR. PERNELL: And letting them know that
9 we are not hostile. We are trying to work with them
10 but they've got to respect our community.

11 CHAIRPERSON REID: I think that that is
12 very important in the city. The ANCs work very hard
13 to try to ensure that the various communities are
14 kept and maintained in the correct manner and that
15 there is no adverse impacts on the citizens who live
16 there when people come into the area. And I think
17 that that is a very important function of the ANC
18 and I really applaud your tenacity in assuring that
19 that happens. This is part of the function of what
20 I think ANCs should really be about. I appreciate
21 that.

22 MR. PERNELL: And that building has for
23 a long time -- you know, we have been down here for
24 years. We are moving into the 21st Century. We
25 just got a proposal for the Subway to be at New York
26 -- I mean, actually in my backyard at First and M

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1 Street. We have, I think, included -- it is
2 unauthorized, but I have included Galludet
3 University. I eventually talked to Reverend Jordan
4 and he had a reception there for me, and we told him
5 that we are moving forward. Because we have a lot
6 of Galludet students there and we want whatever
7 facilities for them, and we want to provide it in
8 the Near Northeast, and that is the relationship we
9 have there.

10 CHAIRPERSON REID: Great. Come up.
11 This is the ANC portion, but Mr. Pernell, if you
12 don't mind.

13 MR. PERNELL: No, I don't.

14 MR. CHOI: First of all, I would like to
15 say that I apologize for --

16 CHAIRPERSON REID: Give your name.

17 MR. CHOI: My name is Steve Choi. I am
18 the owner of the property. First of all, I would
19 like to apologize to Mr. Pernell for not informing
20 him about having an office there. First of all, all
21 the time I owned the property, I not one single time
22 got a letter for a community hearing or a community
23 meeting. I was not informed. If there was a
24 meeting or something was involved, I would have
25 showed up and attended, because it affects the value
26 of my property.

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1 CHAIRPERSON REID: So you were not
2 informed?

3 MR. CHOI: Yes, ma'am.

4 CHAIRPERSON REID: Okay. Well, then Mr.
5 Pernell is going to make sure that you get the
6 communication.

7 MR. PERNELL: The 6A Commission is very
8 clear on that because I typed up those letters and I
9 sent them to the applicant. The applicant is
10 responsible for informing the owner. We can only go
11 by what the BZA sent us, and that is what I
12 responded to. But nevertheless, we are working with
13 the Asian community in Edward Yum's and all them, so
14 everyone is included. We just want them to attend
15 our meetings. Our meetings, by law, are published.
16 Okay. I accept it.

17 CHAIRPERSON REID: Okay. So you get
18 that little communication problem solved.

19 MR. PERNELL: Yes.

20 CHAIRPERSON REID: Thank you very much,
21 Mr. Pernell.

22 MR. PERNELL: Thank you, Board members.

23 CHAIRPERSON REID: All right. There has
24 not appeared anyone in opposition and no one else
25 has come in support. Closing remarks by the
26 applicant?

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1 MR. PERNELL: May I? I am just going to
2 say I do not -- I do not have -- what I would like
3 to say as an attachment is that they would adhere to
4 the parking requirements in that area and that they
5 will use the facility at Galludet to park and not in
6 the community.

7 CHAIRPERSON REID: They have proffered
8 here today on the record that they are using paid
9 parking at Galludet.

10 MR. PERNELL: Okay.

11 CHAIRPERSON REID: They have secured
12 those parking spaces.

13 MR. PERNELL: All right.

14 CHAIRPERSON REID: So that is adequate
15 for us.

16 MR. PERNELL: I thank you.

17 MR. CHOI: Could I add to the parking
18 park?

19 CHAIRPERSON REID: Give your name.

20 MR. CHOI: My name is Steve Choi. On
21 the parking matter, because it is on the street, we
22 have no control who parks in the front of it. He
23 mentioned about parking with Maryland tags. I was
24 not aware of somebody who has Maryland tags.
25 Anybody can park there.

26 CHAIRPERSON REID: Well, what he said

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1 was -- what the applicant stated was that they were
2 going to make sure that the six persons who work
3 there park on the Galludet parking or paid parking,
4 and that is the only thing that we are concerned
5 about. Now I don't know in regard to visitors -- I
6 don't know if it is a -- can you come forward? I
7 don't know if there is a building -- come forward
8 and give your name for the record.

9 MR. CHADWICK: Yes, I am Alan Chadwick.
10 I am the CEO and chief financial officer for Capital
11 University. I want to address Mr. Pernell's
12 question. One is we do want to become part of the
13 neighborhood. I have only been there six months and
14 I have met Mr. Pernell and we want to be open. In
15 the past, I can't explain what happened prior to me
16 getting there and taking over. But we do want to be
17 part of the community. We want to make sure the
18 community is safe, not only for the people who live
19 there but the surrounding area. So we are going to
20 work with you and we will be there at your meetings.
21 We may not agree all the time, but at least we want
22 to take part in it. And we will abide by the
23 regulations of the ANC, because it is your
24 neighborhood. It is our neighborhood also, whether
25 we are transient or not. We belong to Washington,
26 D.C. We work here and we want to be part of the

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1 neighborhood. We may not pay all the taxes that you
2 pay, but certainly our taxes go to support the
3 school system. The parking situation, we really
4 can't control. I came to work this morning at 6:00
5 and there was somebody from Texas, a truck I never
6 saw before. So either Galludet students who live
7 there or live across the street.

8 CHAIRPERSON REID: Excuse me. The
9 concern is that --

10 MR. CHADWICK: We are going to use
11 Galludet.

12 CHAIRPERSON REID: The persons who are
13 employed at that facility or at that address will
14 park on the Galludet Parking lot.

15 MR. CHADWICK: I pay the bills and they
16 will be parking at Galludet.

17 CHAIRPERSON REID: And the other parking
18 -- my question was do you have people who come --
19 like visitors who come there on business?

20 MR. CHADWICK: Very, very rarely.
21 Basically, we have an open house -- to address Ms.
22 King's question about what kind of university it is
23 -- and I will regress a little bit. This is an
24 integrated medicine where you take the alternatives
25 and compile it with practical medicine. We have
26 acupuncturists, aroma therapy, dentistry, and toxic

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1 chemicals. We keep them coming and they are all
2 doctors or dentists or naturopaths, so on and so on.
3 We meet at Galludet for one weekend, Friday,
4 Saturday and Sunday. All the people who fly in from
5 all over the country go to Galludet. They are at
6 the Kellogg Center. They park at the Kellogg
7 Center. Yes, we do have delivery trucks and Fed-
8 Ex's, but there are not really that many. You know
9 Fed-Ex's and UPS, they are 10 minutes or less and
10 they are gone. So we make sure of that. We meet on
11 that one weekend a month. There is an open house at
12 the Kellogg Center. Everybody is focused there.
13 All the money that is derived there comes -- and
14 that is a lot of money. We paid almost \$100,000.00
15 last year to Galludet to hold the classes. So that
16 is substantial support for the neighborhood. Dr.
17 Williams is one of the founders and Judge Jackson is
18 one of the founders of the university, and they are
19 D.C. residents. They contribute regularly to the
20 school. So, we want to be part of the community. We
21 will address the questions about parking. I pay the
22 bills. They will all park there. I park there. So
23 I don't think that is going to be a problem. If
24 there are other people there, please come see me or
25 have Mrs. --

26 MR. PERNELL: Could I pose one small

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1 question? If you are having deliveries -- and we
2 know Federal Express and all them because they have
3 a limit of 12 to 15 minutes, I believe. But these
4 deliveries that are going to take a little longer,
5 could you post a notice in the area where they are
6 going to be doing that to the community so they will
7 know?

8 MR. CHADWICK: Well, the problem we have
9 got is that where they deliver is right in front of
10 the fire hydrant unfortunately.

11 MR. PERNELL: And that is already a
12 violation.

13 MR. CHADWICK: Right. So --

14 CHAIRPERSON REID: You have to move in
15 and out fast.

16 MR. CHADWICK: So they move in and out
17 real fast.

18 MR. PERNELL: Okay.

19 MR. CHADWICK: So I don't know what kind
20 of sign that we can do, but we will certainly work
21 with that.

22 CHAIRPERSON REID: Look, those details
23 you all can work out between the two of you. And if
24 you need it, fine. Maybe you don't need it. If it
25 is going to be addressed with the fire hydrant, then
26 perhaps you don't need it.

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1 MR. PERNELL: Madam Chair, I read that
2 the 6A Commission and the single member district
3 that Wanda has is very pleased with this business
4 being there.

5 CHAIRPERSON REID: Okay. Thank you very
6 much.

7 MR. CHADWICK: Thank you.

8 CHAIRPERSON REID: All right. Closing
9 remarks by the applicant.

10 MR. MERKLINGER: I am Jim Merklinger.
11 We are very happy actually with the process of
12 meeting with the ANC and getting to know the
13 neighbors and actually with the review process. The
14 University itself is before the licensing board for
15 a review of its permission to operate in the
16 District. This process has actually gone fairly
17 quickly. And we ask that if we are approved that we
18 just know the time frame if a permit were to be
19 issued so that we would be able to notify the
20 licensing board that the University would be in
21 compliance with their guidelines also.

22 MS. KING: I would move that we grant
23 this application. It seems to me that they have
24 eventually and substantially met the burden of proof
25 and that we could issue a summary order granting
26 this application.

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1 CHAIRPERSON REID: Mr. Parsons?

2 MR. PARSONS: Second.

3 CHAIRPERSON REID: Did you have any
4 comments?

5 MR. PARSONS: Well, the point I was
6 trying to make earlier I think has bearing here, and
7 that is that this property is difficult property to
8 use for residential purposes because of its size in
9 the context of the other -- I mean, the exhibits in
10 this case show the photographs of other structures
11 to be used for residential are half the size, if
12 that. For that reason, I think there is a hardship
13 in this case. I don't know if you all concur with
14 that, but that is where I was going with that line
15 of questioning.

16 MS. KING: I agree.

17 CHAIRPERSON REID: I concur with my
18 colleagues and feel that they have met the burden of
19 proof for a use variance, and that there does not
20 appear to be any adverse impacts. There is no one
21 here in opposition. The ANC is in favor of it with
22 periodic review. So, therefore, I would be in favor
23 of granting this application. All in favor? Aye?

24 ALL BOARD MEMBERS: Aye.

25 CHAIRPERSON REID: Opposed?

26 MS. PRUITT: Staff will record the vote

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1 as 3 to 0 to approve, motion made by Ms. King and
2 seconded by Mr. Parsons.

3 CHAIRPERSON REID: Okay. You should
4 have your summary order in approximately two weeks.

5 MR. MERKLINGER: Two weeks? Thank you
6 very much.

7 CHAIRPERSON REID: This concludes the
8 July 21 public hearing for the morning session. We
9 will resume at 1:00.

10 (Whereupon, at 12;00 noon, the hearing
11 was adjourned for lunch to reconvene at 1:00 p.m.
12 this same day.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:00 p.m.

CHAIRPERSON REID: The hearing will please come to order. Good afternoon, ladies and gentlemen. This is the July 21st public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today are Betty King and John Parsons representing the Zoning Commission. Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. When coming forward to speak to the Board, please give both cards to the reporter sitting to my right.

The order of procedures for special exception and variance cases will proceed as follows: one, statement and witnesses of the applicant; two, government reports including Office of Planning, Department of Public Works, ANC, et cetera; three, persons or parties in support; four, persons or parties in opposition; five, closing remarks by the applicant. Cross examination of witnesses is permitted by persons and parties with a

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1 direct interest in the case. The record will be
2 closed at the conclusion of each case, except for
3 any materials specifically requested. The Board and
4 the staff will specify at the end of the hearing
5 exactly what is expected.

6 The decision of the Board in these
7 contested cases must be based exclusively on the
8 public record. To avoid any appearance to the
9 contrary, the Board requests that persons present
10 not engage the members of the Board in conversation.
11 The Board will make every effort to conclude the
12 public hearing as near as possible to 6:00 p.m. If
13 the afternoon cases are not completed at 6:00 p.m.,
14 the Board will assess whether it can complete the
15 pending case or cases remaining on the agenda.

16 At this time, the Board will consider
17 any preliminary matters. Preliminary matters are
18 those which relate to whether a case will or should
19 be heard today such as a request for postponement,
20 continuance or withdrawal, or whether proper and
21 adequate notice of the hearing has been given. If
22 you are not prepared to go forward with the case
23 today or if you believe that the Board should not
24 proceed, now is the time to raise such a matter.
25 Are there any preliminary matters?

26 MR. BROWN: Madam Chairman, a quick

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1 question. My name is Patrick Brown from Greenstein,
2 DeLorme and Luchs. On the action agenda, I don't
3 see reference to 16455, Amoco. We are going to
4 proceed with that case today?

5 MS. PRUITT: Correct. That is one of
6 the cases that had been postponed from a previous
7 hearing. This is the agenda that went to the public
8 hearing notice, but it is on the end.

9 MR. BROWN: Thank you.

10 MS. PRUITT: And that also goes for
11 16459.

12 CHAIRPERSON REID: And, Mr.
13 Brown, we apologize for that omission. It should
14 have been on the agenda, but it was not. But it is
15 going to be heard this afternoon.

16 MR. BROWN: Thank you very much, Madam
17 Chair.

18 CHAIRPERSON REID: Thank you. And
19 hereafter, we will make sure that those --

20 MS. PRUITT: It will be on the agenda
21 that is ready for this meeting. It won't be
22 published, but it will be --

23 CHAIRPERSON REID: For the meeting date
24 it will be available.

25 UNKNOWN SPEAKER: Case 16459 will be
26 heard this afternoon?

MS. PRUITT: Yes. Madam Chair, staff

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1 has one preliminary matter.

2 MS. KING: I think Gottlieb Simon has
3 something too.

4 CHAIRPERSON REID: Come up, please.

5 MR. SIMON: Good afternoon, Madam
6 Chairperson. My name is Gottlieb Simon. I am
7 representing Advisory Neighborhood Commission 6B. I
8 am the executive director, and I have two
9 preliminary matters with regard to case 16459, the
10 Marquette University Les Aspin Center case.

11 CHAIRPERSON REID: Okay.

12 MR. SIMON: I want to raise the issue of
13 notice on one issue and another question about it on
14 a second matter. The first issue of notice, I
15 understand that this case came up and was
16 rescheduled for today. I would suggest to you that
17 under those conditions, we really should have
18 received another notice. We didn't receive any
19 notice for today. It was not included in the
20 proposed agenda, as you have already established,
21 that was prepared for today.

22 And finally, I will tell you that
23 callers to the office last week attempting to
24 determine whether or not the case was scheduled were
25 given a variety of answers, some of whom were told
26 that the case was not on and some were told that the

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1 case had been requested for a continuance on the
2 part of one of the ANC's. It wasn't on the part of
3 this one. And I understand it wasn't 6A either. So
4 for all those reasons, we would ask that the case,
5 in fact, be rescheduled for another date.

6 CHAIRPERSON REID: Was the ANC present
7 at the previous hearing date?

8 MR. SIMON: No, we were not.

9 CHAIRPERSON REID: You were not present?

10 MR. SIMON: We were not present.

11 CHAIRPERSON REID: But you were
12 notified?

13 MR. SIMON: I am not sure that we were
14 notified to be present at that time. But I will
15 tell you that the Marquette University staff person
16 told me that he had submitted a request for a
17 continuance from May 21st, which was when it was on.
18 And as a result of that representation, we were not
19 present. We were waiting subsequently to in fact
20 receive an official word for when it was rescheduled
21 for.

22 MS. PRUITT: Madam Chair?

23 CHAIRPERSON REID: Yes.

24 MS. PRUITT: This case was -- well, it
25 was postponed from its original hearing date, and it
26 has been this office's policy -- we don't have the

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1 resources to renotice everyone. That is why we
2 announce it to a date certain, so that we don't have
3 to renotice. And it has been the standing policy of
4 the office. We can change it if you wish. It is
5 that anyone who would be here for the hearing would
6 then be informed of its postponement and then could
7 make the choice to come back.

8 CHAIRPERSON REID: Okay. But the only
9 flaw in that policy is if the ANC is not present at
10 the hearing and the ANC does not have adequate
11 notice then --

12 MS. PRUITT: ANC was noticed on this.

13 MS. KING: Originally.

14 CHAIRPERSON REID: But on the subsequent
15 hearing.

16 MS. PRUITT: It is the responsibility of
17 the ANC to either provide someone at the hearing to
18 then -- so that if it is postponed, they know. We
19 have not -- we don't have the resources to renotice
20 everybody again.

21 MS. KING: But I think the ANCs, because
22 of the great weight we must give to them, fall into
23 a different category, and I would suggest, Madam
24 Chair, that we should institute a policy of if the
25 ANC is not here or is not represented at the
26 meeting, that we certainly have got to let them

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1 know. Even if both adversaries in an adversarial
2 hearing are here and the ANC is not, we have to let
3 the ANC know.

4 MS. PRUITT: Ms. King, that is a
5 rulemaking issue that the Zoning Commission would
6 have to take up.

7 MS. KING: All right. Well, I would
8 suggest, Madam Chair, that we refer to the Zoning
9 Commission as a matter of absolute urgency.

10 CHAIRPERSON REID: Since Mr. Parsons
11 does represent the Zoning Commission, what is your
12 feeling about that?

13 MR. PARSONS: I am trying to recall on
14 how many occasions this occurs. Is this unique?
15 How many times do we notice something and we have a
16 hearing and the ANC is not there and it is
17 postponed? We could take it up as part of
18 rulemaking, but it is probably very seldom. Is it
19 only the ANC that you are interested and not
20 everybody who was noticed within 200 feet?

21 CHAIRPERSON REID: No. Just the ANC
22 because of the great weight.

23 MS. PRUITT: However, they receive the
24 same great weight as a party. And since parties are
25 not determined prior the hearing --

26 CHAIRPERSON REID: No, we don't -- the

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1 great weight is only afforded to the ANC.

2 MS. PRUITT: But parties have similar
3 concerns. So you are not addressing parties at that
4 point, too. That is my concern.

5 MS. KING: But if they are parties, they
6 have to be here at the first hearing.

7 MS. PRUITT: Parties are determined
8 then, though. That is the whole issue.

9 MS. KING: Pardon?

10 MS. PRUITT: You have not determined
11 parties -- sometimes you have not determined parties
12 at that point.

13 MS. KING: But still, if they wanted to
14 be a party, they would be here.

15 CHAIRPERSON REID: They have to be here
16 to be a party.

17 MS. PRUITT: That is the same argument
18 for the ANC.

19 MS. KING: No, that is not.

20 CHAIRPERSON REID: The ANC --

21 MR. PARSONS: Let's not have the hearing
22 here. I'll take it back to the Zoning Commission.

23 CHAIRPERSON REID: Yes. But in the
24 interim --

25 MR. BERGSTEIN: The ANC is automatically
26 a party in a proceeding.

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1 CHAIRPERSON REID: And they are also
2 afforded great weight.

3 MR. BERGSTEIN: If the question is
4 whether or not you can hold -- if there has been an
5 initial hearing and the ANC is automatically a party
6 and they don't attend the first hearing and they
7 claim not to have notice of the second hearing, I
8 don't think that is a great weight issue. I mean,
9 the regulations indicate that the hearing may be
10 adjourned and a new hearing date set at that hearing
11 and no further advertisement is required. You would
12 have to amend the rules to say unless the ANC party
13 doesn't show up. And then in that case, you would
14 readvertise, but then that would open up a
15 discussion about, well, if they are automatically a
16 party but they don't show up at the hearing and then
17 there needs to be a readvertisement, are they going
18 to show up at the second hearing, and why are you
19 having that type of difference. But the rules allow
20 for a hearing to be resumed without advertisement as
21 long as the date is announced at the first hearing.
22 That is the rule.

23 CHAIRPERSON REID: Often ANCs don't come
24 to the hearing. Sometimes they send a letter. But
25 if in fact that -- be that as it may, as a courtesy
26 we then -- Ms. Pruitt-Williams, could we -- if there

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1 is a continuation of a case and the ANC is not
2 present, just as a courtesy could we just call them?

3 MR. BERGSTEIN: You could do that as a
4 policy.

5 MS. PRUITT: We could try. But
6 unfortunately --

7 CHAIRPERSON REID: Or drop them a --

8 MS. PRUITT: Most of the times, the
9 phone numbers -- we can certainly try to call. My
10 concern is their offices aren't manned all the time,
11 so it is very difficult sometimes to reach them. We
12 can leave voice mails and we can send -- it is a
13 resourcing --

14 CHAIRPERSON REID: A fax notice or
15 something? We could do like a template or a form
16 type of thing that addresses the issue of the fact
17 that the ANC was not in attendance. However, on
18 blank date at blank time, this case number blank has
19 been continued and fax it.

20 MR. COTTINGHAM: Madam Chairperson, if I
21 could --

22 CHAIRPERSON REID: Come forward if you
23 would like to speak and give your name.

24 MR. COTTINGHAM: Steve Cottingham
25 representing Marquette University, the applicant in
26 the manner you are discussing.

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1 MS. PRUITT: I am sorry, sir, our PA
2 system isn't working, so could you please speak up?

3 MR. COTTINGHAM: I am sorry. Steve
4 Cottingham representing Marquette University, the
5 applicant in the case that you are discussing. I
6 would just like to say before you rule that we would
7 strongly like to proceed today. I have flown out
8 from Milwaukee this morning to be here. We have
9 arranged to have everyone here. I am a little
10 puzzled, I guess, since the ANC's letter says that
11 they had no meeting back on June 15, why they would
12 need additional meetings at this time. But we are
13 here and we are ready to go. We would strongly
14 prefer to proceed today.

15 MR. SIMON: Madam Chairperson, I would
16 like to make two other points. You may also want to
17 hear from the chair of 6A, who is in the audience as
18 well. With regard just to the issue of today's
19 hearing, I will tell you that I called last week to
20 clarify when this case was, because I had had a
21 conversation with Father O'Brien from Marquette.
22 And I was told by the staff member that it wasn't on
23 for today. I made several calls over several days
24 and got some conflicting answers, but I am here
25 today because my last call said it was. That is on
26 the issue of this particular time.

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1 CHAIRPERSON REID: You called this
2 office and you were given conflicting information?

3 MR. SIMON: That is correct. And I
4 understand that other parties -- I don't know if any
5 of them are in the audience who may have come in
6 since I walked over to the table, were told that it
7 was not on here today. So there was some question
8 as to whether or not we were having this. But aside
9 from that kind of an issue, it may be useful for me
10 to bring up my second point now, because that may
11 have some additional bearing on how we proceed.

12 This is a special exception with regard
13 to Section 206 of the zoning regulations. Section
14 206 has to do with private schools. There is
15 another exception -- another section, Section 210,
16 that has to do with colleges and universities. We
17 would submit that this application has come to you
18 under the wrong section. It should not be coming as
19 a private school. The regulations at several points
20 indicate that they make a distinction or understand
21 that private schools are not the same thing as
22 colleges and universities. Marquette University is
23 clearly a college, a university of higher learning.
24 It is not a private school of higher learning, it is
25 a college and a university. And consequently, this
26 case should be coming before you as a special

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1 exception with regard to Section 210 and not
2 Section 206, and accordingly should be readvertised
3 under that section.

4 MR. COTTINGHAM: Madam Chairperson, if I
5 could be heard on that. We discussed that issue
6 with the staff at length before deciding to apply
7 under 206, and we were specifically informed that we
8 could proceed under either 206 or 210.

9 CHAIRPERSON REID: What staff, sir, did
10 you discuss this with?

11 MS. PRUITT: DCRA staff or this staff or
12 both? Probably DCRA staff, because that is what
13 refers you here.

14 MR. COTTINGHAM: Right, the office with
15 which we filed the application.

16 CHAIRPERSON REID: I am sorry?

17 MR. COTTINGHAM: The Department of
18 Consumer and Regulatory Affairs.

19 CHAIRPERSON REID: Okay. And there they
20 said you could go either -- did you self-certify? I
21 don't have your file in front of me.

22 MR. SIMON: Yes, ma'am, they self-
23 certified.

24 CHAIRPERSON REID: Okay. And you were
25 told that you could go up under 210 or 206?

26 MR. COTTINGHAM: Correct.

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1 MS. PRUITT: Madam Chair, we, of course,
2 just heard this morning the National Graduate
3 University under 206. We also heard the earlier
4 case that is associated with National --

5 CHAIRPERSON REID: Catholic University
6 was 210.

7 MS. PRUITT: I am sorry --

8 MR. SIMON: 210. It originally came in
9 as 206 and then was reconverted to 210.

10 MS. PRUITT: Which one? I am sorry?

11 MR. SIMON: National Graduate University
12 originally came before you as a 206. That issue was
13 presented and they were then readvertised as 210. I
14 am not sure what issues may have been resolved with
15 regard to that institution.

16 CHAIRPERSON REID: Catholic University
17 came --

18 MS. PRUITT: Not Catholic, Capital. The
19 last case.

20 CHAIRPERSON REID: This morning we had
21 Catholic University with --

22 MS. PRUITT: And then we had Capital
23 University.

24 MS. KING: But also the Graduate School
25 --

26 CHAIRPERSON REID: Was that not under

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1 210? MS. PRUITT: They have an
2 established campus plan.

3 CHAIRPERSON REID: They had a campus
4 plan.

5 MS. PRUITT: Correct. So they were
6 further processing their existing case.

7 CHAIRPERSON REID: Right. And then
8 Capital University was under --

9 MS. PRUITT: 206, I believe.

10 CHAIRPERSON REID: As was the Graduate
11 University?

12 MS. KING: No. That was under the
13 other.

14 CHAIRPERSON REID: They came in under
15 210? But they did not have to have a campus plan.

16 MR. SIMON: Madam Chair?

17 CHAIRPERSON REID: Yes.

18 MR. SIMON: National Graduate University
19 initially applied as 206, and that is partly how we
20 became more educated about the issue. They applied
21 at 206 and there was a discussion and they reapplied
22 as 210. And consequently we have been looking at
23 the regulations. I haven't had any conversations in
24 the Department of Consumer and Regulatory Affairs
25 about how they might interpret it. But you will see
26 that if you look on page 31-9 in the chart that

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1 explains which particular special exceptions apply
2 to which, you will see that there is a distinction
3 made between a school, between -- in the first
4 instance, it talks about a school -- private school,
5 trade school, colleges and universities. It then
6 goes on to have a category called private school,
7 excluding colleges and universities. So there is a
8 distinction and there is an exception. And
9 consequently, the present application ought properly
10 to come under 210.

11 CHAIRPERSON REID: Let me ask staff if
12 to your knowledge -- oh, Mr. Bergstein is here. Is
13 it either/or? When it is time for a college or
14 private school, do you have the option of either/or,
15 or is it one or the other?

16 MR. BERGSTEIN: I don't know if I am
17 prepared to answer that off the top of my head.
18 There are --

19 CHAIRPERSON REID: I don't understand an
20 either/or answer. Either it is or it isn't or
21 whatever.

22 MR. COTTINGHAM: If I might add?

23 CHAIRPERSON REID: Yes.

24 MR. COTTINGHAM: Part of what may have
25 driven that is Marquette is not here. We are a
26 private university located in Milwaukee, Wisconsin.

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1 Our program here is not in a sense what people think
2 of probably as a college or university. It is
3 essentially an internship program for some of our
4 students and students from elsewhere. If we get to
5 the matter, Father O'Brien will talk about the very
6 limited presence that they actually have as a
7 private tools capital, essentially once a week. So
8 it is not as if they are taking classes. They are
9 really out here working in congressional offices,
10 FDA, and other government offices. So in looking at
11 31-9, I think it excludes trade schools. In other
12 words, it excludes private colleges and
13 universities.

14 MR. SIMON: 31-9 indicates private
15 schools. And in that particular section that you
16 are referring to, a private schools is distinguished
17 both from a trade school and a college and a
18 university. I don't think that you are suggesting
19 that Marquette is other than a college or a
20 university. I would also like to bring to the
21 Board's attention a letter from council member
22 Ambrose, who also raises the point. I believe you
23 just perhaps received copies of the letter
24 indicating that this is an issue that the Board
25 needs to give some consideration to.

26 And with regard to Mr. Cottingham's

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1 last point, I believe that the 20 or so odd -- or up
2 to 20 or so odd students who are at this campus
3 instead of at the Marquette University campus, they
4 are treated as full students -- full-time students,
5 is that not correct?

6 MR. COTTINGHAM: They are earning
7 college credits for this program.

8 MR. SIMON: And in fact, don't they
9 actually pay more tuition to be in Washington than
10 they do in Marquette?

11 MR. COTTINGHAM: I don't know if that is
12 true. I would just ask why that would be relevant.

13 MR. SIMON: Well, it has to do with
14 whether or not it is just a sort of casual
15 relationship that they have with the university.
16 They seem to have about a \$10,800.00 relationship
17 with the university during the semester that they
18 are here.

19 MR. COTTINGHAM: But the real issue is
20 whether a private university is not also a private
21 school.

22 MR. SIMON: And our regulations
23 contemplate that a private school is not a college
24 or a university.

25 MR. BERGSTEIN: Can I ask the ANC
26 representative where in 206.1 he is reading the

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1 exclusion as not to include universities?

2 MR. SIMON: I am drawing your attention
3 to page 31-9.

4 MR. BERGSTEIN: 31-9?

5 MR. SIMON: Right. That is way in the
6 back.

7 MR. BERGSTEIN: Yes.

8 MR. SIMON: And there is a listing -- a
9 table that shows type of special exception,
10 district, and section in which the conditions are
11 specified. Those are the three columns of the
12 table. And as you go down the table, you will see
13 that there is a row -- there are three rows. One
14 row is entitled schools -- college, university, or
15 other academic institution of higher learning --
16 that is 210. The next row is school-private school,
17 trade school, college or university. So that each
18 one of those entities are separated. And then you
19 see finally the third category, school-private other
20 than trade school. The phrase college or university
21 does not appear in that row.

22 MR. COTTINGHAM: Which was the point I
23 was raising of how you had initially claimed it
24 specifically excluded universities. Instead, you
25 were really just arguing by omission.

26 MR. BERGSTEIN: It does say private

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1 school in both places. In one instance it says
2 private school with college or university and the
3 other says private school without college or
4 university. And then the listing above it says
5 college, university, or other academic institutions
6 of higher learning. The main difference between a
7 college or university is that section, in the
8 private school section. The actual standard is the
9 same in the sense that 206.2 says, "A private school
10 shall be located so that it is not likely to become
11 objectional..." And 210 has that same standard.
12 The principle difference is that if there is a
13 campus per se, then there needs to be a campus plan.
14 In other words, if there is more than one building,
15 you need a campus plan, and a special exception can
16 be consolidated in the campus plan. In other words,
17 you can have a campus plan and consolidate that with
18 a special exception for the use itself. The other
19 difference is that in an R-1 zone, colleges get
20 additional bulk flexibility, which if you are
21 applying as a private school, you don't get. In
22 other words, if you are electing to be considered a
23 private school, then you won't get the flexibility
24 requirements of 210.3. But there is a different
25 demarcation between these two uses -- between
26 private schools and colleges and universities. As I

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1 said, the basic standard is the same except that
2 when a university establishes itself, it has to have
3 a "campus plan". But in this case, there is really
4 no

5 -- if I am correct -- campus. It is a single --

6 MR. COTTINGHAM: It is one -- it is the
7 basement in this building. That is the only space we
8 are talking about.

9 MS. KING: Do you own the entire
10 building?

11 MR. COTTINGHAM: We do. The rest of it
12 is used for residential space.

13 MS. KING: I am sorry, I can't hear you.

14 MR. COTTINGHAM: The rest of it is
15 residential.

16 MS. KING: Oh. Associated with the
17 university or rented out to --

18 MR. COTTINGHAM: Owned by the
19 university.

20 MS. KING: But --

21 MR. COTTINGHAM: The entire building is
22 owned by the university.

23 MS. KING: Yes, I understand. But the
24 people who rent --

25 MR. COTTINGHAM: The program director,
26 Father O'Brien, lives there.

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1 MS. KING: I see. Okay. This entire
2 building is for the use of Marquette, but that is
3 the only building you own in the District of
4 Columbia?

5 MR. COTTINGHAM: Correct.

6 MR. SIMON: And just to flesh out the
7 issue of whether or not they are the same or
8 different, also in Section 9-12, page 9-8, schools
9 and colleges, you will see once again that there is
10 a distinction or a separation between private
11 school, trade school, college or university. Each
12 are being considered a distinct, separate entity.

13 MR. BERGSTEIN: With respect to -- but
14 we are in an R zone here.

15 MR. SIMON: Yes. But my point is simply
16 again that that phraseology appears once again,
17 indicating that those are not synonymous, but are
18 actually separate entities.

19 MR. BERGSTEIN: How would the
20 advertisement of this as a college or university
21 versus the advertisement that this is a private
22 school prejudice you if the standard appears to be
23 the same in terms of the location, the
24 objectionability, and is subject to the same special
25 exception standard and there is no campus?

26 MR. SIMON: Well, there would be some

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1 additional information. There would still be the
2 necessity of a campus plan, whether or not you
3 consider one building to be a campus or not a
4 campus, and the issues of impact upon the
5 neighborhood would be more fully mapped out. You
6 would have the traffic study.

7 MS. PRUITT: Madam Chair?

8 CHAIRPERSON REID: Yes?

9 MS. PRUITT: May I just make a
10 suggestion? The thing with the self-certification
11 is the applicant takes the burden of saying that
12 this is the type of zoning relief that is required.
13 I may suggest that maybe you go forward and if once
14 it gets back to the zoning administrator they
15 determine it comes under 206, that is the burden of
16 a self-certification that then it would have to come
17 back forward. If, for some reason, 206 is upheld
18 and it goes through, then Mr. Gottlieb has the
19 ability to appeal the Zoning Administrations
20 decision. I mean, that is one course. that is why
21 self-certification is done. It allows people to
22 move expeditiously through the process, but they
23 also take that burden and responsibility that they
24 may have to go back through the process if they did
25 not choose the correct zoning and that is just the
26 understanding.

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1 CHAIRPERSON REID: Are you a preliminary
2 matter?

3 MS. NEAL: Yes.

4 CHAIRPERSON REID: Then come forward and
5 state your name, please.

6 MS. KING: And address.

7 MS. NEAL: My name is Jean Marie Neal.
8 I am a neighbor at 621 A Street, N.E. I know this
9 is not the time you are taking neighbors'
10 statements, but I wondered if I could address a
11 misleading statement made by the Marquette lawyer
12 that I think is relevant to this and I think that
13 was a question you were attempting to ask that was
14 not answered about the use of the facility. Is that
15 proper that I can address that?

16 CHAIRPERSON REID: Well, I don't think
17 that is a preliminary matter.

18 MS. KING: No, it is not a preliminary
19 matter.

20 MS. NEAL: I am sorry, it just related
21 to your question about a rental facility.

22 CHAIRPERSON REID: At the appropriate
23 time, you will be able to testify.

24 MS. NEAL: Okay. Thank you.

25 CHAIRPERSON REID: Now, the question as
26 it relates to whether or not it should be continued

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1 --

2 MS. KING: Well, there are two
3 questions. One is should it be continued and the
4 other is is it advertised under the -- and I think -
5 - I mean, let's dispose of that.

6 CHAIRPERSON REID: No, Ms. Pruitt-
7 Williams I think settled that by simply saying we go
8 under this and then it goes back to ZA. If they
9 kick it out, then Mr. Gottlieb would have to appeal
10 it. Given the fact that we are here.

11 MS. KING: So the Board is going to
12 agree that they have self-certified and if they
13 screwed it up, then they get involved in a long
14 legal appeal and that is the responsibility of their
15 lawyers and architects. So that disposes of that.
16 Now we are on the question of do we postpone or
17 continue.

18 MR. PARSONS: Mr. Simon?

19 MR. SIMON: Yes.

20 MR. PARSONS: Has your ANC taken a
21 position on this matter?

22 MR. SIMON: ANC 6B?

23 MR. PARSONS: Yes.

24 MR. SIMON: ANC 6B, yes. We took a
25 position to oppose the case. And I will tell you
26 now that Father O'Brien, who is here today, has

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1 protested very vigorously that we took the case in
2 his absence. MR. PARSONS: Do you have a
3 letter in the record?

4 MR. SIMON: A letter was faxed. I have
5 a copy of the original itself. And --

6 MS. PRUITT: When was it faxed, sir?

7 MR. SIMON: Excuse me?

8 MS. PRUITT: When was it faxed?

9 MR. SIMON: It was faxed on Monday.

10 MR. COTTINGHAM: If I may at this point

11 --

12 MS. KING: Could you speak up?

13 MR. COTTINGHAM: Sure. If I may at this
14 point, since we have come to that issue, the letter
15 is not timely under the rules.

16 MS. PRUITT: It would need to be waived.
17 We understand that. Thank you.

18 CHAIRPERSON REID: Is it in the package?

19 MS. PRUITT: Yes.

20 MS. KING: Is this it? The letter of
21 July -- oh, no, it is July 14.

22 MR. SIMON: Yes, that is the correct
23 one. that is the one.

24 MS. KING: "Dear Board Members,
25 Marquette University is requesting a special
26 exception..."

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1 CHAIRPERSON REID: Did that come today?

2 MS. PRUITT: No. It is in your package.

3 MS. KING: No, it was given to me today.

4 MS. PRUITT: It should be in your
5 supplementary package.

6 MS. KING: But it may have been in
7 another package as well.

8 MS. PRUITT: Because your packages go
9 out on Friday. So anything after Friday has to be
10 put in a supplementary package to give to you today.

11 MS. KING: But it was faxed over on
12 Monday -- this copy was faxed over on Monday, July
13 19?

14 MR. SIMON: Yes. It came with a request
15 that the rule be waived in as much as the
16 chairperson misunderstood that --

17 MS. KING: Yes, that is here too.

18 MR. SIMON: Right.

19 CHAIRPERSON REID: The chairperson
20 misunderstood what?

21 MS. KING: The request for a waiver.

22 CHAIRPERSON REID: The chairperson
23 misunderstood what?

24 MR. SIMON: That he should have faxed it
25 as opposed to bringing it back to the ANC office.

26 CHAIRPERSON REID: Oh, I thought you

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1 were referring to me.

2 MS. KING: No, the chairperson --

3 CHAIRPERSON REID: I understand. Okay.
4 Well --

5 MR. PARSONS: I want to continue on.
6 Mr. Simon, you are obviously here to represent this
7 point of view today.

8 MR. SIMON: Correct.

9 MR. PARSONS: What would a postponement
10 do to change this position?

11 MR. SIMON: Well, it is my understanding
12 that there are some neighbors who would like to
13 weigh in on the issue whose knowledge that we were
14 meeting today was, shall I say, compromised by the
15 representation I made earlier that they called and
16 found out that this matter wasn't coming up and also
17 were generally unaware that this case was in
18 process.

MS. KING: We could perhaps
19 cure that by leaving the record open.

20 CHAIRPERSON REID: I am sorry, we could
21 cure what?

22 MS. KING: The fact that -- what
23 Gottlieb is saying is that there may be some
24 neighbors who didn't get proper information about
25 this hearing and who would like to weigh in with
26 their opinion. The Capitol Hill Restoration Society

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1 is represented, Ms. Neal, who wrote in advance and
2 asked or party status is represented. You are here
3 representing the ANC. And it seems to me that we
4 could leave the record -- we could cure that problem
5 with the neighbors by leaving the record open. Our
6 next decision making meeting isn't going to be until
7 the first week in September. That gives them plenty
8 of time to weigh in with their opinion.

9 CHAIRPERSON REID: And also the letter -
10 - the July 14 letter is in support of the
11 application with conditions.

12 MR. SIMON: Excuse me?

13 CHAIRPERSON REID: I said your letter --
14 the ANC letter --

15 MR. SIMON: Yes?

16 CHAIRPERSON REID: Is in support of the
17 application.

18 MR. PARSONS: That is from 6A or 6B?

19 CHAIRPERSON REID: I don't remember. It
20 must be 6B. Do you have 6B right there?

21 MR. PARSONS: Here.

22 MR. COTTINGHAM: Madam Chairperson?

23 CHAIRPERSON REID: Okay. So 6B opposes
24 and 6A supports it. All right.

25 MR. COTTINGHAM: If I could note for the
26 record, we are actually in ANC 6A, who is in support

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1 of the application, and Mr. Pernell is also here
2 today. We are adjacent to 6B, but we are actually
3 in ANC 6A. And I don't know -- would you like to
4 raise a preliminary question, the question of 6B
5 having given proper notice of their meeting? Or
6 would you prefer that Father O'Brien talk about
7 that?

8 CHAIRPERSON REID: Whether 6A was given
9 proper notice?

10 MR. COTTINGHAM: Whether 6B gave proper
11 notice of their meeting at which they took the vote
12 in opposition of our application.

13 CHAIRPERSON REID: I mean, we can ask.
14 Were you -- did you notify properly?

15 MR. SIMON: The issue in this case is
16 that we had a meeting scheduled for June 8, and that
17 meeting was canceled because as some of you may be
18 aware, one of our Commissioners, Dennis Dollinger,
19 was unfortunately murdered and that occurred on the
20 Friday before our Tuesday meeting. The meeting was
21 thereupon canceled. The notice was put on our door
22 and other efforts were made to notify people of the
23 change in our meeting. I believe that we did manage
24 to put up required notification. But in any event,
25 I believe that the law does say in circumstances of
26 that sort, less than 7 days notice is allowed.

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1 MS. KING: Gottlieb, do I understand
2 that the Marquette University property is not in ANC
3 6B?

4 MR. SIMON: The Marquette University
5 property is exactly on the north side of the
6 boundary separating 6A and 6B.

7 MS. KING: You mean, it is on the other
8 side of the street?

9 MR. SIMON: It is on the other side of
10 the street, that is correct. We then count as an
11 affected ANC rather than the ANC in which it was
12 located.

13 MS. PRUITT: So, therefore, the Board
14 does not -- it is not granted great weight.

15 CHAIRPERSON REID: Okay. Let us try to
16 move on from this point, the preliminary matter.
17 The issue on the floor is whether or not we should
18 proceed today. I think it would be my take on this
19 that we would go ahead and proceed with it. As Ms.
20 King suggested, you'd have ample time to meet and
21 then to weigh in by submitting a written -- putting
22 a written report on your position that we would pass
23 at a time that we would actually have the meeting to
24 decide this case.

25 MS. KING: Well, we have their written
26 report. What he is considered about is the

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1 neighbors. CHAIRPERSON REID: Well, he --
2 that is the whole point I am making.

3 MS. KING: And additional public
4 comment.

5 CHAIRPERSON REID: He is saying that
6 they want to have the time to get additional
7 comments and submissions to submit to us.

8 MR. SIMON: Well, I am saying their
9 opportunity to participate today or to be here today
10 has been compromised.

11 CHAIRPERSON REID: Well, not if they can
12 submit it in writing, Mr. Simon.

13 MR. SIMON: No. You will be able to
14 hear from them, but their ability to be present at
15 this hearing will have been, as I say, compromised.

16 CHAIRPERSON REID: Well, that -- I don't
17 know if that -- whether or not it is compromised or
18 not. The most important thing is that they have the
19 opportunity to be able to have their view or their
20 opinion aired to us, which they will be given that.
21 They would be afforded that opportunity.

22 MR. SIMON: I understand.

23 CHAIRPERSON REID: And I think under the
24 circumstances and given the fact that Marquette is
25 here and ready to go and has flown in, we would try
26 to be fair about this and give them an opportunity

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1 to submit and to go ahead with the case today. That
2 would be my take on it. I don't know what the other
3 Board members -- how you feel about this?

4 MS. KING: I agree.

5 MR. PARSONS: Agreed.

6 MR. COTTINGHAM: One point of
7 clarification. I anticipate we could also have
8 neighbors submit letters if the record is open so
9 that it could --

10 CHAIRPERSON REID: If the record is
11 open, they will give -- and we will give time lines
12 for the submission of their responses or whatever.

13 MR. COTTINGHAM: Okay.

14 CHAIRPERSON REID: We have until
15 September -- our first meeting in September in order
16 to do all that. So there is ample time.

17 MR. COTTINGHAM: Thank you.

18 MR. SIMON: Thank you.

19 CHAIRPERSON REID: All right. Are there
20 any other preliminary matters? Does staff have any
21 preliminary matters?

22 MS. PRUITT: No. We would just like to
23 let you know that the third case in the afternoon,
24 application 16472, I believe all the participants
25 are here.

26 CHAIRPERSON REID: Okay. Are you all

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1 ready now? Can you come forward at this time to be
2 taken first?

3 MR. LYLES: Yes. Yes, we are ready.

4 CHAIRPERSON REID: All right, then come
5 forward. Mr. Hart will call the case.

6 MR. HART: Case No. 16472 of the Holy
7 Christian Missionary Baptist Church for all People,
8 pursuant to 11 DCMR 3107.2, for a variance from the
9 rear yard setback requirements of Section 774.7; and
10 a variance from the number of parking space
11 requirement of Section 2101.1, for proposed new
12 construction of a church for a 812 seating in a C-3-
13 A premises at 4000 Benning Road, N.E., Square 5081,
14 Lot 52. Would those persons planning to testify,
15 please stand and raise your right hand.

16 (WITNESSES ARE SWORN.)

17 MS. PRUITT: Madam Chair?

18 CHAIRPERSON REID: Yes.

19 MS. PRUITT: Staff has just one
20 preliminary matter on this and that is that the
21 property was posted two days late. For the record,
22 we would just like to let you know that.

23 CHAIRPERSON REID: Okay. Should we
24 waive the --

25 MS. PRUITT: Yes, you need to deal with
26 that. However, it was posted -- it was posted for

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1 13 instead of 15 days. It was posted, but it was
2 just two days late.

3 CHAIRPERSON REID: Unless there are any
4 objections from anyone here, then we can waive that
5 requirement that it be posted 15 days in advance of
6 the hearing date.

7 MS. PRUITT: Okay. And I believe there
8 is another issue. The Park Service has requested
9 party status in this case. Could you please come
10 forward? This is the time to do so. Actually,
11 could they just sit there and request that they need
12 to just talk -- they are requesting party status.

13 MR. ROSENSTOCK: We make our
14 presentation first?

15 MS. PRUITT: No. This is still a
16 preliminary matter. We haven't gotten into the
17 merits of the case at all.

18 MR. ROSENSTOCK: Sure.

19 CHAIRPERSON REID: Okay.

20 MR. ROSENSTOCK: Good afternoon. My
21 name is James Rosenstock representing National
22 Capital Parks East.

23 CHAIRPERSON REID: I am sorry, sir, you
24 have to speak up. We are having --

25 MR. ROSENSTOCK: I am sorry. Good
26 afternoon. My name is James Rosenstock representing

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1 National Capital Parks East in this matter.

2 MS. KING: Your address? Your home
3 address?

4 MR. ROSENSTOCK: 13508 Harrison Avenue,
5 Fort Washington, Maryland 20744.

6 MR. MURPHY: Good afternoon, my name is
7 David Murphy. I am representing the National
8 Capital Region of the National Park Service this
9 afternoon. My home residence is 7910 Woodrow Place,
10 Cabin John, Maryland.

11 CHAIRPERSON REID: Okay. Go ahead, Ms.
12 King.

13 MS. KING: Do you request party status?

14 MR. MURPHY: Yes.

15 MR. ROSENSTOCK: Yes, ma'am.

16 CHAIRPERSON REID: Basically, I guess
17 you are not familiar with the process. You give us
18 the basis by which you feel that you should be
19 granted party status. That is what you are here for
20 right now.

21 MR. ROSENSTOCK: Oh, okay. Basically as
22 the adjoining landowner of the historic Fort Mahon,
23 we request party status. I am prepared to make a
24 presentation, but I had thought that that would
25 follow the applicant's presentation.

26 CHAIRPERSON REID: Not right now. And

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1 also, isn't there a federal interest, the Department
2 of Interior?

3 MR. ROSENSTOCK: Well, yes.

4 CHAIRPERSON REID: That is what I am
5 saying.

6 MR. ROSENSTOCK: National Park Service
7 property, historic Fort Mahon of the Fourth Circle
8 Parks, Department of the Interior.

9 CHAIRPERSON REID: And that is why you
10 want party status?

11 MR. ROSENSTOCK: It is adjoining
12 property, yes, ma'am.

13 MS. KING: I recommend that they be
14 given party status.

15 CHAIRPERSON REID: No problem with me.
16 Okay. Now.

17 MR. LYLES: Thank you, Madam Chairman
18 and Board. My name is Dean Michael Lyles, attorney
19 for Holy Christian Missionary Baptist Church, and we
20 are here today to request a variance for two
21 restrictions -- a rear yard setback restriction and
22 a required number of parking spaces.

23 The Board of Zoning may grant a variance
24 on this lot 52, Square 5081 generally from strict
25 application of the zoning regulations to relieve
26 peculiar and exceptional difficulties or exceptional

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1 and undue hardship caused by exceptional narrowness,
2 shallowness or shape of a specific piece of property
3 at the time of the original adoption of the
4 regulation, or by reason of exceptional
5 topographical conditions or other extraordinary or
6 exceptional situation or condition on a specific
7 piece of property. A variance may be granted,
8 however, only if such relief can be granted without
9 substantial detriment to the public good and without
10 substantially impairing the intent, purpose and
11 integrity of the zoning plan.

12 We are here today to request a variance
13 for the proposed plan for Holy Christian Missionary
14 Baptist Church to build a new church home facility
15 in a C-3-A zone, which is currently undeveloped and
16 has always been so. The height and design of the
17 building conforms in every way to the zone plan
18 except for the rear yard setback and the parking
19 spaces. The planned use, a church, will be an
20 integrated design of high quality and multiple uses
21 associated with providing Sunday service and service
22 to the community. The applicant hopes to add value
23 to a small area of the District that has been
24 neglected by major businesses and the government.
25 The pastor and the parishioners hope to bring
26 additional spirit and commitment to service to a

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1 neighborhood already being served by the wonderful
2 people at Marshall Heights, Metropolitan Police Boys
3 and Girls Club, and the National Park Service. The
4 organizations currently assisting the community
5 cannot do it all, however, and the applicant
6 promises a gleaming new church facility on the hill
7 welcoming all.

8 With respect to the rear yard setback,
9 the applicant will evidence through our architect,
10 Mr. Otis Johnson here, one of our primary witnesses,
11 the practical difficulties because of the unique
12 characteristics of the subject property. He will
13 discuss the topography, the park land adjacent to
14 the property, the location of Metro, and the amount
15 of dirt that needs to be moved and the support that
16 the design can give to emergency vehicles and not
17 detract from life, safety and health for the users
18 in the surrounding community.

19 In addition, compliance with the
20 applicable area restrictions would be unnecessarily
21 burdensome. The application that you should have
22 shows the requirements for 12.8 feet based on the
23 height of the building. Our requirement or our
24 design shows only 12 feet, and we will let Mr.
25 Johnson discuss the construction difficulties and
26 the economic unfeasibility of a major redesign of

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1 that small space. So without any further ado, I
2 would like for Mr. Johnson to discuss the basis for
3 the project, after introducing himself and where he
4 works. The basis for the project and the rear yard
5 setback variance that we seek. Just introduce
6 yourself.

7 MR. JOHNSON: Yes. My name is Otis
8 Johnson, and I am a principle with Design
9 Construction Management, architects and engineers,
10 Clinton, Maryland.

11 MS. KING: I am sorry, I can't hear you,
12 sir.

13 MR. JOHNSON: Yes, Otis Johnson. I am a
14 principle with Design Construction Management Team.
15 We are architects and engineers based in Clinton,
16 Maryland.

17 MS. KING: And your home address?

18 MR. JOHNSON: 8910 Bluffwood Lane in
19 Fort Washington, Maryland.

20 MR. LYLES: And, Mr. Johnson, describe
21 the basic design of the church and how the rear yard
22 setback comes into play.

23 MR. JOHNSON: I have before you here a
24 site plan. I know some of you are a little ways
25 away here, so I have outlined in yellow to indicate
26 the property line. The building is located -- as

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1 you see this line here, it is into a hill. This
2 building is built into a hill that rises from
3 roughly 78 feet above sea level at the sidewalk and
4 bed and road, up to 102 feet. So as you can see,
5 there is quite a slope there. And our proposal is
6 basically building this building into that hillside.
7 This building is composed of about 13,000 square
8 feet on each floor. The total building is 29,000
9 square feet. The lot coverage here is roughly 250 x
10 100 or about 25,000 square foot lot. There is
11 adjacent to this property park land to the right --
12 National Park Service property -- and to the rear
13 National Park Service property, all of which is
14 undeveloped, of course. There is one residence to
15 the left. The neighborhood is generally commercial.
16 There is a funeral home across the street, a boys
17 and girls club, and also a shopping center right
18 across the street.

19 This church is proposed to seat 670
20 worshipers. We were only able to provide, because
21 of the space requirements of the church, we were
22 only able to provide 16 parking spaces on site.
23 However, as recently as last week, we had some
24 conversations with city officials of the Highway
25 Department, who suggested that we cut another
26 entrance to make two entrances into Benning Road,

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1 which we would have liked to have done at first.
2 This change we believe will allow us to increase the
3 parking spaces maybe to 20 and maybe even 26.

4 MR. LYLES: Mr. Johnson, deal
5 specifically with the rear yard setback right now
6 and the difference between the 12.8 feet and the 12
7 feet.

8 MR. JOHNSON: Okay. Well actually what
9 we are talking -- because of the height limitation,
10 we are 12 feet. We are short on that rear yard by 8
11 inches. We are short in the setback 8 inches. It
12 is a fact -- I don't know how I can describe that
13 any more. I don't have photographs.

14 MR. LYLES: Are there exits coming out
15 from that --

16 MR. JOHNSON: Yes, we had to provide
17 some space in the rear here to provide exits for the
18 basement.

19 MR. LYLES: Can people come out of the
20 building safely if they had to exit?

21 MR. JOHNSON: We are providing adequate
22 exits.

23 MS. KING: Which is the high end and
24 which is the low end.

25 MR. JOHNSON: Well, this is Benning Road
26 along here.

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1 MS. KING: Okay. And that is where --

2 MR. JOHNSON: It goes up hill, up to 102

3 up on the high end here. It continues to rise.

4 MS. KING: And where does the park come

5 out again?

6 MR. JOHNSON: Beg your pardon?

7 MS. KING: The park land?

8 MR. JOHNSON: The park land is to the

9 right side over here and to the rear.

10 MS. KING: Now your building is going to

11 go to the property line on Benning Road?

12 MR. JOHNSON: To the property line on

13 Benning Road. We have got a 12 foot setback.

14 MS. KING: We should be 12'8"?

15 MR. JOHNSON: 12'8".

16 MS. KING: Other than that, there is no

17 problem about the size of the building?

18 MR. JOHNSON: No.

19 MS. KING: Now where are the parking

20 spaces going to be?

21 MR. JOHNSON: The parking spaces are

22 located to the right side of the lot. There is an

23 alley, a public alley, that borders adjacent to the

24 property, both on this side and to the rear.

25 MS. KING: Right.

26 MR. JOHNSON: That alley currently is

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1 undeveloped. The church proposes to improve that
2 alley -- to actually build the alley. The alley is
3 just actually designated --

4 MS. KING: Do you have permission from
5 the Department of Public Works?

6 MR. JOHNSON: We are working with them.
7 We are working with Public Works now and there
8 doesn't appear to be any problems. It is just a
9 matter of some small details in terms of how we
10 manage the storm water.

11 MS. KING: Now in the various papers
12 that we have received, there are various numbers as
13 to the amount of parking that you would have to have
14 or that you should have for this project.

15 MR. JOHNSON: Right.

16 MS. KING: I have seen the number 31, 66
17 and 82. What is the number that should be required?
18 How many -- what kind of a variance are you asking
19 for?

20 MR. LYLES: We can deal with that,
21 ma'am.

22 MS. KING: Well, he mentioned parking
23 and I would like to hear about parking.

24 MR. LYLES: Okay, sure.

25 MS. KING: I mean, he was showing me
26 where it was. You've got 16 spaces.

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1 MR. JOHNSON: We have got 16 spaces
2 here, which we believe because of some recent
3 changes we will be able to increase that to 25.

4 MS. KING: But that is way off the
5 number that you should have.

6 MR. JOHNSON: Yes. By zoning, based on
7 812 spaces, we will need roughly 82 parking spaces.

8 MS. KING: Okay. Now what is the
9 capacity of this building? I see scratched out 812,
10 because you said it was going to be a building for
11 670.

12 MR. JOHNSON: Well, 670 is the first
13 phase of this building. We are planning for a
14 future balcony at some point which will house
15 another 142.

16 MS. KING: So in fact I can now cross
17 out 670. You are building a facility for 812
18 people?

19 MR. JOHNSON: 812 people.

20 MS. KING: And for 812 people, how many
21 parking spaces should you have?

22 MR. JOHNSON: We should have 82 based on
23 the ratio of one per 10.

24 MR. LYLES: One of the things that Mr.
25 Johnson will be able to talk about is the number
26 that was submitted in the application is based on

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1 what we hope will be the Board's using its authority
2 to reduce the number of spaces.

3 MS. KING: From 82 to 16?

4 MR. LYLES: Well, under 112108.2, the
5 Board has the authority --

6 MS. KING: Sure, we have the authority
7 to do it, but it is a big jump.

8 MR. JOHNSON: Well, it is a big jump --

9 MS. KING: Therefore, at some point in
10 your presentation, you are going to tell us where
11 those other 70 cars go, right?

12 MR. LYLES: Yes. Mr. Johnson was a
13 little precipitous in mentioning the parking.

14 MS. KING: No, I raised it. Go ahead.

15 MR. LYLES: Okay. So we are going to
16 talk about it, but we wanted to break it down into
17 two components. The rear yard setback, to give you
18 a full picture of that, and then as he finishes
19 that, we will talk about the parking.

20 MS. KING: Okay.

21 MR. JOHNSON: Okay. What I might -- and
22 I think Mr. Lyles will probably go into this in a
23 little bit more detail -- but we are assuming --
24 this is a C-3-A zone and there is possible on-street
25 parking available. There is a Metro station. The
26 Benning Road station is roughly -- it is about 900

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1 feet away, and I think the zoning regs allow for 800
2 feet. So we are just slightly over that 800 foot
3 limitation to the Metro station. There are shopping
4 centers and other parking directly across the street
5 that I will let Mr. Lyles address in terms of the
6 status of the parking arrangement agreements with
7 the people in the neighborhood.

8 MR. LYLES: While we are on parking,
9 what were the special considerations with respect to
10 the topography of the lot and the parking that you
11 can provide?

12 MR. JOHNSON: Well, we were limited in
13 the sense that because this is on a hillside, we had
14 to build the parking in the terraces. So we weren't
15 able to flatten the site out. Right now, we are
16 requiring some retaining walls as you might imagine
17 around that parking lot to accommodate the use of
18 the terraces. We don't plan to cut all of the fill
19 out of that hill. We want to nicely terrace it so
20 that it will blend into the surrounding conditions.
21 And since it is a hill, we don't want to turn out
22 and make a large retaining wall. So we are
23 terracing the parking to help it blend into the
24 area.

25 Now in terms of -- I think the other
26 issue would be how we are dealing with the parking,

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1 as you addressed it.

2 MR. LYLES: Talk about your discussions
3 with the traffic division and what effect you think
4 a discussion with them can have on the traffic
5 coming in and out of the parking lot.

6 MS. KING: Do you have a traffic
7 consultant's report?

8 MR. LYLES: No, we don't. We just
9 talked to traffic and Mr. Otis Johnson will tell you
10 about that.

11 MR. JOHNSON: Well, we had some
12 conversations with traffic. We thought because of
13 the traffic --

14 MS. KING: You mean with the Department
15 of Public --

16 MR. JOHNSON: The Department of Public
17 Works.

18 MS. KING: I am sorry, I thought you had
19 a traffic consultant. Go ahead.

20 MR. JOHNSON: Okay. Normally if this
21 were a high traffic area, they would not allow for
22 two entrances into a major thoroughfare. So,
23 therefore, our initial design included only one
24 entrance. But after reviewing it with the Highway
25 Department and Public Works, they recommended that
26 we bring in two entrances, which is in my opinion

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1 that they don't expect heavy traffic in that area,
2 especially on Sundays. They are going to allow us
3 to put another entrance in there and that is the
4 thing that is going to allow us to redesign the
5 parking lot to accommodate 25 cars.

6 MR. LYLES: And, Mr. Johnson, talk about
7 the bus stop at the entrance and the handicap drop-
8 off, please.

9 MR. JOHNSON: Okay. Because of the
10 first floor elevation -- we are making the first
11 floor elevation of the building identical to the
12 sidewalk elevation. There will be direct
13 handicapped access from the sidewalk directly into
14 the building. There is also a handicap drop-off up
15 here on the parking lot, which will be able to
16 accommodate people with wheelchairs or other
17 handicapped people who can't be dropped off at this
18 level. We are providing an elevator in the building
19 to access between the two floors.

20 MR. LYLES: Do we have appropriate
21 handicap spaces?

22 MR. JOHNSON: We are accommodating.
23 There are sufficient handicap spaces.

24 MR. LYLES: Okay. Now I would just like
25 to have Pastor Young discuss a little bit about the
26 church and why this requirement for 82 will be

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1 obviated somewhat by the church's initiatives in
2 providing some services not only to the community
3 but also to the individuals that will be
4 parishioners at the church. Talk a little bit about
5 the history of the church and how you got to this
6 point, Pastor Young.

7 MR. YOUNG: I want to thank the Zoning
8 Board for allowing us to come. I am Pastor Steven
9 Young, Pastor of the Holy Christian Missionary
10 Baptist Church. We are presently at 601 50th
11 Street, N.E., which is the national progressive
12 headquarters, which is the chapel of the
13 headquarters and where we hold our services. Our
14 initial starting date was we started in October of
15 1992, at the Zelch's Banquet Facility, which Ms.
16 Zella Worsley is here in support of what we are
17 doing. We stayed there for about three years and
18 then we moved to the progressive headquarters, where
19 we are presently holding our services.

20 One of our trustees saw this sign up
21 where it said the property was vacant. We did some
22 investigating and found out the property was
23 available to do some building on. Trustee Allen is
24 here. So we were able to secure the property. I
25 hear the gentlemen talking about our parking. We
26 have a very young church. God gave me a vision to

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1 start this church and try to get some of the kids
2 off the streets and out of neighborhoods and out of
3 the crime system so that we could be an effective
4 entity in our church. Right now in our church, we
5 have NA, which is on Tuesday.

6 MR. LYLES: What is NA?

7 MR. YOUNG: NA is rehabilitation for
8 drug and drug users. We also have AA, which is
9 alcohol abuse, and that is very Tuesday. We also
10 every second and fourth Saturday, we preach on the
11 Street up on Nannie Helen Burroughs Avenue, which no
12 other church is doing that.

13 MR. LYLES: Now about the composition of
14 the church, how many of your parishioners actually
15 drive to the church and how many actually walk or
16 live in the neighborhood?

17 MR. YOUNG: Well, the advantage of our
18 church is that there is a bus stop in front of our
19 church where we are now. Not only is there an
20 advantage here, but at the new location there is
21 also a bus stop in front of the church. About 50
22 percent of our people drive. The other 50 either
23 ride motorcycles or bicycles or they ride the bus.
24 So because the bus stop is right in front of our
25 church, that gives them the opportunity to come.
26 The oldest person at our church is something like

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1 60. Our youngest are ages from 18 to 21 to 33. It
2 is a real young church and all of them do not have
3 vehicles. They either get a ride, get dropped off
4 and then picked back up, but the bus is the help.

5 MR. LYLES: Talk about your plans for a
6 shuttle service, if any.

7 MR. YOUNG: Well, once we get the new
8 church built down on Benning Road, the Metro Subway,
9 which is on Minnesota Avenue, which they call the
10 Minnesota Avenue line, we have two vans which can
11 pick up and bring those person who are getting off
12 the subway to the church and then take them back to
13 the Metro stop.

14 MR. LYLES: Talk about the investigation
15 into buying property around the church for
16 additional parking off-site.

17 MR. YOUNG: Well, we discovered that
18 there were some vacant properties on Benning Road,
19 some vacant houses that have been there for years,
20 which I felt the neighborhood looked kind of bad.
21 So our investigation now is to get that property
22 bought so that we can use it for additional parking.
23 It is across the street from our property that we
24 have now, which those houses have been vacant, from
25 what the neighbors tell me, 10 to 20 years. And so
26 while we are doing our work trying to find out who

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1 the property belongs to, we want to get that
2 property and tear it down and make it for additional
3 parking, which will probably help our church as we
4 continue to build what we are doing on Benning Road.

5 MR. LYLES: What discussions did you
6 have with anybody in the community with respect to
7 the parking agreements for short-term that we could
8 use parking in their facilities? Who did you talk
9 to?

10 MR. YOUNG: Well, we talked to Stuart
11 Funeral Home. We talked to the Safeway. We even
12 talked to the Girl and Boy's Club about using their
13 facilities for parking on Sunday, which we would
14 only need parking from 8:00 to 2:00.

15 MR. LYLES: What did you find out once
16 you talked to the Boys and Girls Club? Who owned
17 that lot next to the Boys and Girls Club?

18 MR. YOUNG: Oh, I can't remember the
19 exact name.

20 MR. LYLES: The Park Service.

21 MR. JOHNSON: Was it the Park Service?

22 MR. LYLES: You told the Board what you
23 remember.

24 MR. YOUNG: It was the Park Service,
25 yes.

26 MR. LYLES: And so did you have

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1 conversations with the ANC with regard to the church
2 coming into the community?

3 MR. YOUNG: Yes. And from all
4 indications, even when I talked with neighbors,
5 nobody had a problem with that, the property going
6 up. Because I do attend community meetings. In
7 fact, we had a meeting just last month at Ms. Zella
8 Worsley's place, which is at Nannie Helen Burroughs
9 Avenue, with the Marshall Heights president. And
10 they were talking about how excited they were about
11 building a church on Benning Road and they didn't
12 see any problems with it. So the ANC and the
13 neighborhood -- a couple of people were concerned
14 about churches being built and that kind of thing.
15 They wanted to know why we needed another church on
16 Benning Road. Well, there are only four churches on
17 Benning Road total, and our church will be the
18 fourth one. I looked at it. Trinidad is on Benning
19 Road and 17th, and then they have three other
20 churches. Across East Capitol Street, there is
21 another church across from Fort Chaplin, and then we
22 would be the fourth church. So there is a need
23 because of what we are doing and our outreach.

24 MR. LYLES: What is the bulk of the use
25 of the facility going to be used for?

26 MR. YOUNG: Well, our intent is to have

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1 before and after care, senior citizens care,
2 daycare. We still want to do our outreach feeding.
3 We will adopt a family. Those persons who have been
4 locked up and incarcerated, we adopt a family. We
5 give toys to the kids. We started off by feeding at
6 Thanksgiving and Christmas and the Lord spoke to me
7 and said that is not enough. So now we feed
8 quarterly. Every three months, we get out and
9 advertise and we get people to come. We witness to
10 them and feed them and then we clothe them. We have
11 a clothing ministry. The sisters take the women if
12 they need baths or whatever, and wash them up. The
13 men take the brothers and wash them up and give them
14 clothes and what have you. The thing is that a
15 church is not supposed to be just sitting there for
16 advertisement. It is supposed to be ministering.
17 Not to just be done on Sunday morning. It is an
18 outreach, where we go out to compel others.

19 MR. LYLES: Now how does this affect the
20 parking in your current neighborhood, all of these
21 outreach programs?

22 MR. YOUNG: Well, right now we have
23 parking at the progressive headquarters where we
24 park on the street. The police department -- in
25 fact, we have police officers in our church to make
26 sure that we are parking legally. And then we park

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1 up on the hill at the school because it is closed on
2 Sunday and during the week. So we have additional
3 parking because our services, when they start at
4 7:30 or 8:00, the school -- Nanna Ambrose is closed
5 and everything else is gone, so we can park up
6 there.

7 MR. LYLES: Okay. Mr. Johnson, could
8 you enlighten the Board about the economic
9 feasibility of adding the number of spaces that are
10 required over what we are asking for? What would
11 that require in the redesign of the facility and/or
12 the parking lot?

13 MR. JOHNSON: Well, the only way we
14 could consider accommodating sufficient cars on that
15 site and still accommodate the church program would
16 be a parking garage. Certainly that would be at
17 about \$10,000.00 per car for parking.

18 MS. KING: How much?

19 MR. JOHNSON: \$10,000.00 per car would
20 be prohibitive for the church to consider as an
21 option. The other option to accommodate the parking
22 would be to reduce the size of the church, which
23 then we would not be able to accommodate the
24 church's programs.

25 MR. LYLES: What are the costs, if any,
26 associated with a change in redesign that you just

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1 talked about?

2 MR. JOHNSON: Well, we are probably
3 talking in the neighborhood of \$10,000.00 --
4 \$9,000.00 or \$10,000.00 to redesign the entire
5 structure to accommodate the required parking.

6 MR. LYLES: What about the rear yard
7 setback? Is there a cost associated with redesign
8 if the Board does not grant the variance?

9 MR. JOHNSON: There would be a slight
10 structural cost due to redesign, but that could be
11 accommodated without a major problem.

12 MS. KING: With respect, sir, I don't
13 think that you can justify a peculiar difficulty by
14 the fact that you purposely designed something that
15 needed a variance. I mean, that is a self-imposed
16 hardship. So that the cost and so forth is not an
17 argument in favor of a hardship that is imposed upon
18 you by the land. That is a self-imposed hardship.

19 MR. LYLES: What about the -- go over
20 again the topographical features with respect to
21 increasing that side. Are there any things the
22 Board needs to know with regard to how the
23 topographical features allow for the type of
24 building which you have designed?

25 MR. JOHNSON: No, I don't -- I think I
26 have covered that pretty much. I don't think -- I

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1 can't see anyway I can add to that.

2 MR. LYLES: Okay. We have several
3 witnesses, I think, who are signed up to offer
4 comments also.

5 CHAIRPERSON REID: Okay. Let me ask a
6 couple of questions. You said that -- this is to
7 Pastor -- I am sorry, your name?

8 MR. YOUNG: Young -- Pastor Young --
9 Steve Young.

10 CHAIRPERSON REID: That you had inquired
11 about trying to obtain a lot across the street?

12 MR. YOUNG: Yes, ma'am.

13 CHAIRPERSON REID: The property?

14 MR. YOUNG: There are two houses there.

15 CHAIRPERSON REID: Okay. And then you
16 wanted to raise those houses to make a parking lot?

17 MR. YOUNG: Yes, ma'am. Both of them
18 are vacant. They are empty houses.

19 CHAIRPERSON REID: And how far have you
20 gotten with that process?

21 MR. YOUNG: Well, we have found out that
22 they were I guess in tax default. So we are just
23 trying to figure -- that is still a year process,
24 even after we secure them. There is the process of
25 getting them. There is a house that is not occupied
26 and then there is a lot next to them. We are trying

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1 to get three lots and we are trying to do it
2 together so that we can -- when we go over, we want
3 to do one project. So that the parking is feasible
4 for what we might need.

5 MS. KING: What is the zoning of those
6 three lots? Are you going to have to come back to
7 this Board to get permission to build a parking lot?

8 MR. YOUNG: We probably will.

9 MR. LYLES: Is there a lot already there
10 that the church looked into?

11 MR. YOUNG: Oh, yes. There is a lot
12 there that is vacant next to the two houses.

13 MR. LYLES: And is that -- what is the
14 position of that lot? Is that near the street? Are
15 there other parking lots that the church looked into
16 or spaces that currently have no houses around them?

17 MR. YOUNG: Well, we looked at Stuart
18 Funeral Home for parking, but it just didn't -- they
19 just didn't want to comply with what we needed to
20 have done at this time.

21 MR. LYLES: What about the parking space
22 next to the Boys and Girls Club, the Park Service?
23 Is there a lot available there?

24 MR. YOUNG: There is a lot there as
25 well. A lot there as well.

26 MS. KING: Is it an existing parking lot

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1 or where you would have to come back to get
2 permission to build a parking lot?

3 MR. YOUNG: Are you talking about where
4 the houses are?

5 MS. KING: No, I am talking about the
6 Park Service and the Boys and Girls Club?

7 MR. YOUNG: Oh, no, ma'am. No, no, no.

8 MS. KING: There is parking there now?

9 MR. YOUNG: Yes, ma'am.

10 MS. KING: But they have not made an
11 agreement with you to allow you to park there?

12 MR. YOUNG: No. I mean, we want to be
13 neighbors. I mean --

14 MS. KING: I understand. But what I am
15 saying is that you don't have -- what you have is 16
16 or possibly 20 parking spaces.

17 MR. YOUNG: Yes.

18 MS. KING: And you are required to have
19 82.

20 MR. YOUNG: Yes.

21 MS. KING: And there is no place except
22 on the street to dump the other 62 cars.

23 MR. YOUNG: On the street, there is free
24 parking on Saturday and Sunday.

25 MS. KING: And nobody else ever parks
26 there on Saturday and Sunday?

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1 MR. LYLES: Because there is nothing
2 there.

3 MS. KING: But what about the Boys and
4 Girls Club?

5 MR. YOUNG: They park on their lot.

6 MR. LYLES: They park on the Park
7 Service lot. That is I guess the position we are
8 in. The parking lot the Park Service owns is being
9 utilized as a parking lot. The Park Service uses it
10 for parking for visitors to their park and the Boys
11 and Girls Club utilizes it only because they have no
12 parking at their space, as we found out once we
13 investigated. Additionally, there is nothing on
14 that side of Benning Road that anyone would need to
15 park on that side of the street. Additionally, on
16 the other side are residents.

17 MS. KING: Are there 20 spaces on your
18 side of the street?

19 MR. LYLES: Oh, there are more than 20.

20 MR. YOUNG: More than 20.

21 MR. LYLES: More than 20. Because the
22 facility takes up almost half of a block -- from the
23 alley all the way down to another alley where the
24 house exists. Could you talk about that?

25 MR. JOHNSON: Well, I don't have an
26 overall site plan. But roughly -- the footage on

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1 Benning Road is roughly 240 feet or 250 feet.

2 MS. KING: And across the street from
3 that frontage is --

4 MR. JOHNSON: That is all open too. So
5 you've got about 500 feet across the street.

6 MS. KING: On Benning Road -- on the
7 other side of Benning Road, there is nothing?

8 MR. JOHNSON: There is a funeral home.

9 MS. KING: This is Stuart's Funeral
10 Home?

11 MR. JOHNSON: Stuart's Funeral Home.
12 And then right in front of the lot are residences of
13 which --

14 MR. YOUNG: They park out back.

15 MR. JOHNSON: They park in their own
16 lots in the back. And there are several houses that
17 are vacant. And there is a vacant lot that is
18 currently undeveloped. That is about a block. And
19 then the next block is the parking lot where the
20 Park Service has their parking and then the Boys and
21 Girls Club is at the end of that block. So we are
22 talking about two blocks in front of the Holy
23 Christian Missionary Baptist Church. No one parks
24 on Benning Road on either side at any point in the
25 day because of all the other available parking that
26 exists.

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1 MR. YOUNG: Ms. King and Ms. Reid, may I
2 address something else that just came to my mind?
3 Stuart Funeral Home is here and Marshall Heights is
4 here. There is a side street, 40th Street --

5 MS. KING: Marshall Heights what?

6 MR. YOUNG: Headquarters.

7 MR. JOHNSON: Community Development
8 Organization.

9 MS. KING: CDC?

10 MR. YOUNG: Yes, ma'am. Well, down that
11 street there is no parking. Nobody parks down
12 there. That is -- I mean, there is parking that is
13 available.

14 MR. LYLES: And the beauty of the --

15 CHAIRPERSON REID: Okay. So have you
16 investigated --

17 MR. YOUNG: I am just saying there is
18 extra space.

19 MR. LYLES: It is public. It is on-
20 street parking. And the beauty of this particular
21 location is that there are commercial properties on
22 the other side and organizations and very few
23 residences on either side within a two block radius.
24 So we get to a situation where people park either in
25 their driveways, behind their homes, behind the
26 parking lot, behind the businesses or organizations.

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1 CHAIRPERSON REID: My question is the
2 lot that Pastor Young referred to, it is a vacant
3 lot?

4 MR. YOUNG: Yes, ma'am.

5 CHAIRPERSON REID: And where is that in
6 proximity to your particular property?

7 MR. YOUNG: Yes, ma'am. It is about
8 four doors away from Stuart Funeral Home.

9 CHAIRPERSON REID: Okay. And you are
10 saying that you all do park on this lot or --

11 MR. YOUNG: No, ma'am. We are not -- we
12 have people working trying to secure the houses so
13 that we can use them for additional parking.

14 CHAIRPERSON REID: There is a lot on
15 your side of the street as well as across the
16 street?

17 MR. YOUNG: No, ma'am, across the
18 street. Not on my side, across.

19 CHAIRPERSON REID: Okay, I have gotten
20 confused. I thought you were saying that that lot
21 and the houses were across the street and then that
22 there was another lot that was on the same side.

23 MR. YOUNG: No, ma'am.

24 MR. LYLES: I provided some pictures
25 that will show a different view.

26 CHAIRPERSON REID: Okay.

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1 MS. KING: The zoning of the houses that
2 you intend to tear down, what is the zoning?

3 CHAIRPERSON REID: They didn't know.

4 MR. YOUNG: We didn't know. It is still
5 under investigation to find out how --

6 CHAIRPERSON REID: Okay. Now the
7 purpose of your coming to this Board is to make a
8 case for being given the relief of a variance.

9 MR. YOUNG: Yes, a variance.

10 CHAIRPERSON REID: And that requires
11 that you have to satisfy a three-prong test.

12 MR. LYLES: Yes.

13 CHAIRPERSON REID: All right. And
14 basically that is the merits of your case and that
15 is what you need to be moving into. Because that is
16 going to be the crux of whether or not you are able
17 to have this variance granted to you.

18 MR. LYLES: Well, we were attempting to
19 show -- we were attempting to show that there are
20 exceptional topographical conditions which don't
21 allow for additional parking on site. We also were
22 showing that the parking as it is with Pastor Young,
23 we can show that there is no detriment to the public
24 good. And through Mr. Johnson we showed that the
25 setback, because it is surrounded by woods and also
26 because of the access to parking and the numbers of

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1 people that do not drive attending the church, there
2 would be no impairment of the intent and purpose and
3 integrity of the zoning plan.

4 CHAIRPERSON REID: Okay, wait. What is
5 the practical difficulty?

6 MR. LYLES: Well, the practical
7 difficulty is that in order to have 82 spaces, there
8 would be additional cost and there is no need for
9 additional spaces because of the numbers of people
10 that take public transportation. And the --

11 CHAIRPERSON REID: No. What you have to
12 demonstrate is if in fact you were to comply with
13 existing zoning regulations, in other words what
14 would keep you from complying with existing zoning
15 regulations? What is the practical difficulty that
16 you would incur as a result of --

17 MR. LYLES: Well, first of all, as Mr.
18 Johnson will attest to again, there is no room for
19 82 spaces on the lot as it is currently configured.

20 CHAIRPERSON REID: But Ms. King -- sorry
21 to interrupt you, but Ms. King indicated to you that
22 basically what you are establishing is a self-
23 imposed hardship. The lack of the parking spaces is
24 a function of the fact that your building is so
25 large and you can't accommodate building a lot.

26 MR. LYLES: What we are saying is not

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1 that the building is so large, but if you reduce the
2 size of the church any more, you get to the
3 situation where the church already is. They are in
4 an overcrowded situation. And reducing the size of
5 the church in order to accommodate the numbers of
6 parking that are required, it is one for every 10.
7 That is a huge requirement for a church. Because
8 once you reduce it past a certain size, you begin to
9 get -- have problems getting people into the church
10 and you get into a standing room only situation.
11 The church is currently overcrowded. And I would
12 say that 82 spaces or even reducing the size of
13 church as currently configured reduces the capacity
14 of the church to do its ministry, which it has to do
15 really out of space it is kind of on loan for.

16 MS. KING: But what Chairperson Reid is
17 saying is that you have chosen -- if you were going
18 to have a facility for 812 people that requires 82
19 or approximately -- I mean, the difference between
20 the required 82 and the 16 to 20 that you are going
21 to provide is huge.

22 MR. LYLES: Well, let's look --

23 MS. KING: No, wait a minute. Let me
24 just finish. What you have done is chosen a plot of
25 land that is too small to build a facility that will
26 accommodate 812 people and minimal parking. The

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1 pastor has testified that half of the people drive.
2 That would be 400 odd people. And even if they came
3 on an average of two people per car, we are talking
4 about 200 cars, right? He said that -- in his
5 testimony that 50 percent of the people drive.

6 MR. LYLES: Well, I guess he means --
7 and he will say that we have families.

8 MS. KING: Ultimately, that would be 300
9 to 400 people are driving.

10 MR. LYLES: Well, that is not true for
11 any church. Because basically what you have is
12 people in families. It is a family church. So 4 or
13 5 --

14 MS. KING: Okay. Say half the
15 congregation, 400 people, come. And that they
16 average 3 per car. Is that reasonable? Because
17 some of them are going to be couples without
18 children and some of them are going to be couples
19 with three children each or something like that or
20 even to be generous say four.

21 MR. LYLES: Okay.

22 MS. KING: That is 100 cars that you
23 bring in.

24 MR. LYLES: Okay.

25 MS. KING: And you are providing 16 to
26 20 parking spaces for 100 cars, and there may be

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1 more.

2 MR. LYLES: I understand.

3 MS. KING: So, I mean, this is a big
4 hurdle for you all to get over. And to say this is
5 the only place in the District of Columbia where we
6 can build this and it is too small and therefore it
7 is a hardship that you must take into consideration
8 doesn't fly. Because it is again, as the
9 Chairperson has pointed out, a self-imposed
10 hardship. You need a facility for 812 people and
11 you need 82 parking spaces, and you have a piece of
12 property that will not accommodate both of those
13 things.

14 MR. LYLES: Well, we will let the pastor
15 talk about investigating other pieces of property in
16 the District and --

17 MS. KING: I am not sure that we can
18 take that into consideration.

19 MR. LYLES: Well, I think you brought it
20 up, Ms. King, that there is other available
21 property, and I would beg to differ that there is no
22 other available property. You are in a land-locked
23 city that doesn't allow for the kinds of buildings
24 that people want to build now that host the numbers
25 of people that will go to church. And it is just --
26 the land is just not available. And so we are where

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1 we are with respect to building. The church --

2 MR. YOUNG: Our ministry is in D.C.

3 MR. LYLES: It is trying to minister
4 here in the District of Columbia.

5 MR. YOUNG: Our ministry is in D.C. You
6 see, I think that --

7 CHAIRPERSON REID: Wait a minute, Pastor
8 Young. In the alternative, then providing parking
9 spaces across the street so that you can have an
10 accessory parking lot to go with that church. But
11 for you to attempt to obtain a variance of that size
12 is rather a stretch. It is really a stretch. You
13 are kind of pushing the envelope a lot there. I
14 think that there is no way that I can see that that
15 -- that you can adequately accommodate your
16 congregation. And then you go to adverse impacts.
17 You are going to have parking problems, traffic
18 problems, noise problems in that community. I don't
19 see any way of getting around it unless you are able
20 to identify other parking adjacent to or across the
21 street or somewhere to accommodate those cars. I
22 just don't see how you could do otherwise. Go
23 ahead, I am sorry.

24 MR. LYLES: Is there a -- we are in the
25 process of procuring space within what the
26 regulations require within 400 feet of the church.

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1 That has not come to fruition. If we do that, does
2 the Board see any capacity or number of parking
3 spaces that it would pass muster at this junction?

4 CHAIRPERSON REID: That is a
5 hypothetical correction. We have to --

6 UNIDENTIFIED SPEAKER: On Benning Road
7 along there is parking --

8 CHAIRPERSON REID: First of all, ma'am -
9 - ma'am, I am sorry, but you can't speak from the
10 audience. But you will be given an opportunity to
11 testify and you can do so at that time. We cannot
12 allow you to just arbitrarily just shout out.

13 UNIDENTIFIED SPEAKER: Well, I raised my
14 hand.

15 CHAIRPERSON REID: No, it is not that.
16 You will be given an opportunity, but you can't do
17 it at this time.

18 MR. YOUNG: I think that we fail to look
19 at the overall picture. Now, we are not homeowners.
20 We want our own church. We are leasing -- I mean,
21 any day the people where we are now could say you've
22 got to go. My kids don't have a place to stay. I
23 want to be a homeowner. When that property came our
24 way, it was a blessing that we got it. And we have
25 been sitting on that property for three years,
26 paying taxes and the whole nine yards that go with

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1 it. And we have just gone through so much just to
2 get it. I am telling you, we are not going to give
3 that property up because we have to build it on that
4 because that is the property that God gave us to
5 build. Now, what I am saying to us is that we have
6 to look at Metro. I mean, every day anybody who
7 goes to church knows that you can't stop visitors
8 from visiting your church. Anything new that goes
9 up, people are going to come to see it. Not just
10 members but visitors. If you've got something to
11 offer, they are going to come. Now, Metro is around
12 the corner. My kids walk. They ride their bikes.
13 There is a bus stop in front of it. I am telling
14 you, we are not sitting on a church where my kids
15 ride in Benzes and big cars. If they do get a ride,
16 it is about four or five or six of them packed up in
17 one car just to get there. I am only saying to us
18 as a people that we have to look at the overall
19 picture. That in order for us to be effective -- I
20 know that our church will be a help to Benning Road,
21 because I see that we are being a help to Nannie
22 Helen Burroughs Avenue. The crime is down. I mean,
23 people are catching buses to church and from church
24 at night, when they wouldn't do it at first. I am
25 the only pastor who goes to the hood and convinces
26 the youngsters that this is not the way. 6th

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1 District and 7th District police station will tell
2 you I am the man in that town. When it comes down
3 to getting it done, nobody else does it. They don't
4 have the heart to do it. I am only saying what I
5 have to offer -- senior citizen care is needed,
6 before and after care is needed, daycare is needed.

7 CHAIRPERSON REID: Pastor Young, be that
8 as it may, and your point is well taken and I agree
9 wholeheartedly with everything you are saying
10 because it is very important and it is true.
11 Nonetheless, we still have a zoning issue to get
12 around.

13 MR. YOUNG: We can't park on the street?
14 You are telling me we can't park on the street, a
15 free street that nobody else is parking there?

16 CHAIRPERSON REID: That becomes an
17 enforcement issue that we don't have jurisdiction
18 over. Nonetheless, what you are here for today is
19 to try to get the zoning relief that you need, and
20 this is what we have to deal with. Your ministry
21 and the competencies that you are accomplishing, it
22 is extremely applaudable for you to do that. We
23 need it and we appreciate it and we welcome that.
24 But we have still got a zoning issue that we have to
25 address here today.

26 MR. YOUNG: And the zoning problem is

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1 this. We are not going to Maryland. We are going
2 to build on Benning Road. And the thing that I am
3 trying to get us to understand is that there is no
4 way in the world that it can't be done.

5 CHAIRPERSON REID: Well, the only
6 solution I can -- as I said before, is that you need
7 more land. You need to acquire more land --

8 MS. KING: Or make some kind of deal
9 with somebody somewhere within 400 feet for parking.

10 CHAIRPERSON REID: And that -- you see,
11 this is -- and you've got to understand in all the
12 good that you are doing, you don't want to be the
13 cow that stuck its foot in the milk. Because in the
14 interim --

15 MS. KING: I didn't know you were a
16 country girl.

17 CHAIRPERSON REID: In the interim, if in
18 fact we grant this and then you have a colossal
19 adverse impact over there, then you've got problems.
20 This is what we are trying to avoid is causing
21 inadvertently more problems. While you are trying
22 to solve these problems over here, you create more
23 over there.

24 MR. YOUNG: What problems do you think
25 that we will have?

26 MS. KING: Parking problems. Traffic

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1 disruption. Noise of traffic. And then, of course,
2 there are all the questions that are raised about
3 the ecological impact. But traffic, parking and
4 safety and impact on property values, environmental
5 impact of the stability of the land are all
6 questions that were raised by members of the ANC.

7 MR. PARSONS: Madam Chairman?

8 CHAIRPERSON REID: Yes.

9 MR. PARSONS: Reverend, how many
10 parishioners or members of your parish do you have
11 now?

12 MR. YOUNG: About 500.

13 MR. PARSONS: And --

14 MR. YOUNG: And that is in two services.

15 MR. PARSONS: Two services. So how is
16 it that you need a church with 812 seats? That is
17 the issue here. If you were to build a smaller
18 church, you wouldn't be here today. And you are
19 asking this Board to create a variance of a
20 proportion that I don't think we have ever done.

21 MR. YOUNG: Well, you know --

22 MR. PARSONS: It is not as though you
23 can run around the city and look at other churches
24 and say, you did it here or you did it there or you
25 have done it all over the city. I mean, this is
26 extremely unusual.

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1 MR. YOUNG: I want to try to accommodate
2 for what I envision. I know people are going to
3 come. And so my thing is that I want to be
4 prepared. I mean, we are in a sanctuary now which
5 holds 350, and even now we have to have chairs down
6 the aisles. It gets so crowded that we have to open
7 the doors and they sit out on the porch. My thing
8 is that I am just envisioning that because of the
9 type of ministry that we are going to offer. People
10 are going to come and I want to accommodate. I
11 mean, there is nobody --

12 MR. PARSONS: You have the wrong site
13 then. You just do. You need a site that will
14 accommodate the 800 people, and this is not it. It
15 might have been three years ago when you started
16 with a smaller following, if you will. But it has
17 gotten
18 -- you probably need 1,400. I am persuaded that you
19 are a man of great influence and have a great
20 following, I am sure. You may have to move on from
21 here in two more years. I am kidding. I just can't
22 imagine what would bring us to giving you this
23 variance. I understand your argument of Metro and
24 on-street parking and so forth. But to set the
25 precedent in this city for that kind of a variance
26 is just too much. So if you were to go out and buy

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1 the properties across the street and come forward
2 with a parking proposal that made sense, it may be
3 worth pursuing. But we can't speculate on that
4 here.

5 MR. YOUNG: So if I go back and get
6 permission from other supporters -- the funeral
7 home, Boys and Girls Club, or maybe the Safeway or
8 whatever the case may be, which they are across the
9 street and I can get some type of permission from
10 them to park?

11 MS. KING: In writing. You need some
12 kind of a contract or something of that nature.

13 MR. YOUNG: So you would consider that?

14 CHAIRPERSON REID: Oh, absolutely.

15 MR. YOUNG: Okay.

16 MR. PARSONS: It has to be a contract of
17 some kind. It can't be that the manager of the
18 Safeway moves on and the next one throws you out.

19 CHAIRPERSON REID: That is all you have
20 to do is to provide parking.

21 MR. YOUNG: Well, I have been to them
22 three or four times and I just have to go. I don't
23 know. We have build that there. That is the
24 vision. We can't go anywhere else.

25 CHAIRPERSON REID: Well, that is the
26 thing. You see, given the fact that you are

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1 deficient in the parking, then that is where your
2 job is. Impressing upon them the importance of
3 contractually agreeing to allow your congregation.
4 Once you get those additional parking spaces -- and
5 I think you are lacking 66?

6 MS. KING: No. They should have 82
7 parking spaces and they are going to have 16 or 20 -
8 - maybe 20. But that is less than a quarter of what
9 they need even if it is 20. And there are other
10 issues that the people in opposition to this case
11 are going to be raising as well that you may --

12 CHAIRPERSON REID: So we have to listen
13 to the whole case. And then after having heard the
14 entire case, then you will see -- you will get a
15 better picture as to what is required.

16 MR. YOUNG: Okay. All right.

17 MS. KING: But I mean, we have all more
18 or less told you that the parking is an impossible
19 impediment.

20 CHAIRPERSON REID: The rear yard
21 setback, I think that that -- you know, we could
22 probably work that. But the parking is so --

23 MR. YOUNG: Okay. We are one down.

24 MR. LYLES: We appreciate that. If the
25 Board in its judgment sees fit to grant us the rear
26 yard setback, we will work very hard at bringing

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1 back a parking arrangement that you can go with.

2 MS. KING: Well, then we have to listen
3 to the other issues that are going to be raised by
4 the people in opposition.

5 CHAIRPERSON REID: I am just saying that
6 that appears it is something that is workable.
7 Again, we have to hear the whole case.

8 MR. PARSONS: Mr. Johnson, I wanted to
9 better understand the drawing before us here and the
10 slope and so forth. Do you have a cross section?

11 MR. JOHNSON: Yes. I have got a --

12 MS. KING: Here are the plans, John.

13 MR. PARSONS: No, I don't. Could I?

14 MS. KING: Oh, yes.

15 MR. PARSONS: I didn't realize.

16 MS. KING: They are in the file.

17 MR. JOHNSON: The Benning Road
18 elevation. I'll give you --

19 MS. KING: This is the Benning Road
20 elevation.

21 MR. JOHNSON: The Benning Road
22 elevation.

23 MS. KING: Okay. So the slope is not up
24 from Benning Road, it is up from 42nd Street?

25 MR. JOHNSON: No. Benning Road is down
26 here.

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1 MS. KING: And where is 42nd Street?
2 MR. JOHNSON: 42nd Street is --
3 MR. LYLES: To the left.
4 MR. JOHNSON: To the left, yes. To the
5 left. The hill is going up here.
6 MR. LYLES: 42nd Street doesn't go all
7 the way across into the property.
8 MS. KING: And Minnesota is to the
9 right?
10 MR. JOHNSON: Minnesota -- no, Minnesota
11 is --
12 MS. KING: Can you show me on this map?
13 MR. YOUNG: We are wrong. 42nd is to
14 the right and Minnesota is to the left of this
15 building.
16 MR. JOHNSON: Minnesota is down here.
17 MR. YOUNG: That is right.
18 MR. LYLES: This is Benning Road and
19 Stuart Funeral Home is directly across the street.
20 MS. KING: And where is your plot?
21 MR. LYLES: The plot is this circle
22 right in there.
23 MS. KING: Oh, I see. It is a bunch of
24 different --
25 MR. LYLES: Yes, it is a lot of plots.
26 So Minnesota is way down here. This is an alley and

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1 there is a house here and there is a street.

2 MS. KING: Okay. Maybe we can work it -
3 -

4 CHAIRPERSON REID: So this was --

5 MS. KING: So this is the house that is
6 there?

7 MR. LYLES: Yes.

8 MS. KING: This is the house that is
9 there and you are some of this?

10 MR. LYLES: Yes, that is correct.

11 MS. KING: There is a house here. This
12 is Benning Road. And Stuart's Funeral -- I mean,
13 here is the Boys and Girls Club. Stuarts Funeral
14 Home is here?

15 MR. LYLES: Right here. This is a lot.
16 This is vacant. This is what the pastor is talking
17 about. And there are some houses here too and there
18 is a vacant lot here.

19 MS. KING: And where is the Safeway?

20 MR. LYLES: The Safeway is down here.

21 MS. KING: I see.

22 MR. LYLES: There is a whole shopping
23 center here.

24 MS. KING: Down here?

25 MR. LYLES: Yes. We presented the
26 pictures that showed --

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1 MS. KING: Yes, but I was just trying to
2 identify it on the map.

3 MR. LYLES: This street is this street
4 here.

5 MS. KING: Okay. So this would be
6 Stuart Funeral Home. And you are right here?

7 MR. LYLES: Correct.

8 MS. KING: Somewhere in here.

9 MR. LYLES: Right. That is it right
10 there.

11 MS. KING: Now, does your land run to
12 where this house is?

13 MR. YOUNG: Yes. It runs right up to
14 the lot line right here.

15 MR. LYLES: There is an alley that
16 separates the property and the house.

17 MS. KING: Okay. So this in effect is
18 your property and this is the alley which doesn't
19 exist.

20 CHAIRPERSON REID: And what is this
21 right here?

22 MR. LYLES: That is part of the park.

23 CHAIRPERSON REID: So it is park land?

24 MS. KING: Here it is.

25 CHAIRPERSON REID: Oh, okay.

26 MR. LYLES: It is a huge area.

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1 CHAIRPERSON REID: Yes.

2 MS. KING: You see, they are in here.

3 MR. YOUNG: Right. There you go.

4 MS. KING: Okay. So they are in C-3-A.

5 And there is the park. Okay, got you.

6 MR. PARSONS: I don't think that is what

7 I was interested in. How about the one labeled main

8 entrance?

9 MR. JOHNSON: That is the main entrance

10 off of the parking lot.

11 MR. PARSONS: Yes. So to the right of

12 your hand there is the alley, is that correct?

13 MR. JOHNSON: Yes. There is an alley

14 right here.

15 MR. PARSONS: And Benning Road then is

16 to the left?

17 MR. JOHNSON: Yes, and down.

18 MR. PARSONS: So where is the property

19 line on the right side of the drawing?

20 MR. JOHNSON: Right here?

21 MR. PARSONS: Yes.

22 MR. JOHNSON: The property line is about

23 here.

24 MR. PARSONS: And the result of your

25 design effort makes it an 8-inch encroachment, is

26 that right?

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1 MR. JOHNSON: Yes.

2 MR. PARSONS: You are 12 feet back?

3 MR. JOHNSON: Yes.

4 MR. PARSONS: 12 foot instead of 12'8".

5 MR. JOHNSON: Yes.

6 MR. PARSONS: And then I was trying to -

7 - could you go back to the plan, please?

8 MR. JOHNSON: The plan?

9 MR. PARSONS: It was the one on --

10 MR. JOHNSON: You want to see a plan?

11 MR. PARSONS: What is happening there on

12 the alley about a third of the way down the building

13 itself?

14 MR. JOHNSON: Here?

15 MR. PARSONS: Yes, right there.

16 MR. JOHNSON: Nothing. This just

17 identifies it as a public alley. Right now it is

18 all trees. It is not developed.

19 MR. PARSONS: I am sorry, I didn't make

20 my point. On your side of the alley then, what is

21 happening midway down the building? Stairways and

22 so forth?

23 MR. LYLES: There is a retaining wall.

24 MR. PARSONS: Oh. That is not shown on

25 the section then. Oh, okay.

26 MR. LYLES: Yes. There is a retaining

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1 wall back here.

2 MR. PARSONS: And what is it retaining?
3 Your property or the public alley?

4 MR. JOHNSON: It is retaining the park
5 land property to the rear of the alley beyond and
6 above.

7 MR. PARSONS: Oh, so you are below.

8 MR. JOHNSON: Yes. We are building into
9 -- actually, we are building into the hillside.

10 MR. PARSONS: All right. So between the
11 alley and your building then will be a --

12 MR. JOHNSON: A retaining wall.

13 MR. PARSONS: A retaining wall. So that
14 is the reason for the stairs then.

15 MR. JOHNSON: Yes.

16 MR. PARSONS: Oh, I understand.

17 MS. KING: And the alley is a full floor
18 below the retaining wall, is that it?

19 MR. JOHNSON: The alley is roughly --
20 give me a second. The alley is about let's say 93
21 at this point, and we are at 87.3 at the entrance to
22 the facility.

23 MS. KING: Oh, I see. So you have to
24 climb up to it?

25 MR. JOHNSON: To go up to the alley,
26 yes.

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1 MR. PARSONS: So if you are driving
2 along the alley, on top of the retaining wall, would
3 there be some kind of a guardrail or something?

4 MR. JOHNSON: Oh, yes. Yes.

5 MR. LYLES: And know that there is not
6 an alley like you envision an alley now. It is
7 trees.

8 MS. KING: But you are asking DPW for
9 permission to develop it?

10 MR. JOHNSON: Yes. Right.

11 MS. KING: Because it is necessary for
12 safety purposes for building this housing of 812
13 people that you have exits in all directions and so
14 that the emergency vehicles can get around. So you
15 have no option but to develop that.

16 MR. JOHNSON: Right. Most definitely.

17 MR. PARSONS: Okay. Now I understand.
18 Thank you very much.

19 CHAIRPERSON REID: Okay. Are there any
20 other questions Board members? I was asking if
21 there were any questions. If not, does that
22 conclude your statement?

23 MR. LYLES: Yes, we are going to
24 conclude here. And I think based on what we talked
25 about today, our witnesses will just come back with
26 us next time if the Board does not grant us the

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1 variance.

2 CHAIRPERSON REID: Well, again, let's
3 hear the whole case.

4 MR. LYLES: Okay. Well, we have some
5 witnesses who would like to testify.

6 CHAIRPERSON REID: Oh, are they
7 testifying with you?

8 MS. KING: On technical matters?

9 MR. LYLES: No, they are not technical
10 matters. They are citizens and they are testifying
11 on their own.

12 CHAIRPERSON REID: That is fine. In
13 support?

14 MR. LYLES: Yes.

15 CHAIRPERSON REID: Okay. Then they will
16 have an opportunity to do so.

17 MR. LYLES: Thank you.

18 MR. YOUNG: Thank you so much.

19 CHAIRPERSON REID: Is the ANC here?

20 MS. KING: Is anybody from the ANC here?
21 Now the Park Service is a party.

22 CHAIRPERSON REID: Is there any cross
23 examination from the Park Service?

24 MR. ROSENSTOCK: No questions.

25 CHAIRPERSON REID: No questions.

26 MS. WORSLEY: Excuse me, there is

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1 supposed to be someone here from the ANC. I don't
2 understand why they aren't. But I am here as a
3 member of the community.

4 CHAIRPERSON REID: Okay. You will be
5 given an opportunity to speak. And if the ANC comes
6 before we conclude this case, I will give them an
7 opportunity to speak as well. All right, government
8 reports? ANC? Have we got a letter from the ANC?

9 MS. KING: We have a letter from the
10 ANC. They did not, however -- and I have lost it.

11 MR. LYLES: Which we have not received.

12 CHAIRPERSON REID: Oh, yes. They --

13 MS. KING: It is dated the 15th of July.

14 CHAIRPERSON REID: ANC 7D -- go ahead.

15 MS. KING: The 15th of July, they needed
16 four members for a quorum and only three members
17 were present at the meeting. Therefore, they --
18 however, they did raise the following questions.
19 They want us to require the applicant to conduct a
20 full impact study and share the findings with the
21 ANC 7D. The study should address the potential
22 impact that the construction would have on a) small
23 plants and tree displacement; b) soil erosion and
24 other ecological and environmental changes in the
25 area; c) vehicular traffic increases and parking
26 considerations; d) safety and traffic pattern; and

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1 e) property values of the houses in the immediate
2 area of the proposed church. The general opinion of
3 most residents present was that the community could
4 not cope with the occasional increase of traffic and
5 individuals to the neighborhood, and it is the
6 collective opinion that the variances should not be
7 allowed. Residents cited the tax-exempt status of
8 the church as another imposition to economic growth
9 in the community. The influx of transient activity
10 and additional automobile traffic into the area by
11 residents of surrounding jurisdictions could become
12 a nuisance. Stability of the land may become
13 threatened by major changes to the soil up on the
14 hill and could eventually effect the surrounding
15 neighborhood with respect to unstable surface and
16 soil.

17 MR. LYLES: We would just --

18 MS. KING: You have my copy.

19 CHAIRPERSON REID: Yes, you will have an
20 opportunity to respond.

21 MR. LYLES: Okay.

22 MS. KING: But you can have my copy.

23 MR. LYLES: Thank you. I appreciate
24 that.

25 CHAIRPERSON REID: Let me just state for
26 the record that that is an ANC report and it

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1 reflects the fact that there was not a quorum
2 present, so a vote was not taken. This is basically
3 a conclusion that they came to, but it was not an
4 official vote that was taken. And this is basically
5 being proffered to us --

6 MS. KING: As an opinion of the
7 community.

8 CHAIRPERSON REID: Yes, as an opinion of
9 the ANC.

10 MS. KING: Are you an ANC commissioner,
11 madam? Are you an ANC commissioner?

12 UNIDENTIFIED SPEAKER: I am an opponent
13 because I live on --

14 MS. KING: But you are not an ANC
15 commissioner?

16 UNIDENTIFIED SPEAKER: No.

17 MS. KING: Okay.

18 CHAIRPERSON REID: Now since the ANC is
19 not here and we read the ANC report --

20 MR. PARSONS: This is another ANC
21 report. This is 7C.

22 CHAIRPERSON REID: Okay, ANC 7C. Ms.
23 King, would you like to summarize that for us?

24 MS. KING: Oh, let's see. Now do we
25 have to waive this in?

26 CHAIRPERSON REID: It just came today?

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1 Yes. We will so waive. We will waive the ANC
2 report in as far as the timeliness is concerned. I
3 don't know if you have seen this.

4 MR. LYLES: I haven't seen it.

5 CHAIRPERSON REID: It is dated July
6 20th.

7 MR. LYLES: It is not the ANC that is
8 required to present their report.

9 CHAIRPERSON REID: Well, apparently this
10 is an ANC that is in close proximity.

11 MS. KING: Again, we have no indication
12 as to whether there was a quorum present. But ANC
13 7C is in opposition to the proposed location of the
14 Holy Missionary Christian Baptist Church. There are
15 three or more churches closely to this location.
16 This would cause a drastic impact on the community
17 with additional traffic problems. Furthermore,
18 there are just too many churches on this side of
19 Ward 7 and in Ward 7 as a whole. We are asking that
20 you vote no in opposition to this case.

21 MR. LYLES: We will just object to both
22 letters.

23 CHAIRPERSON REID: What is that attached
24 thereto?

25 MS. KING: This is from Radiation Safety
26 at GWU and then there is something from --

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1 CHAIRPERSON REID: Does this have any
2 relevance to this particular case?

3 MR. PARSONS: I think that that
4 shouldn't be attached.

5 CHAIRPERSON REID: I didn't think so.

6 MS. KING: Oh, no, it is something --

7 CHAIRPERSON REID: All right, physically
8 the ANC has a report and you can cross examine the
9 ANC. But the ANC is not here. But did you want to
10 say something?

11 MR. LYLES: Well, we just want to object
12 to both letters.

13 CHAIRPERSON REID: First of all, you
14 have to come forward and you have to give your name.

15 MS. KING: Excuse me. It seems to me
16 that since there is nobody here to cross examine,
17 that the gentlemen should deal with this issue in
18 his closing remarks.

19 CHAIRPERSON REID: Okay. All right.

20 MS. KING: But we have made it clear
21 that since neither indicates -- we are required to
22 give great weight under law to the advice of the ANC
23 provided they have a quorum and it was a duly
24 constituted meeting. This is not that. They have
25 raised some concerns --

26 CHAIRPERSON REID: Or an opinion that we

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1 are taking into consideration.

2 MS. KING: And we will consider them as
3 we do all community concerns, either pro or con.

4 MR. LYLES: Okay. But not given the
5 great weight that is due an ANC.

6 CHAIRPERSON REID: No. We cannot give
7 great weight.

8 MR. LYLES: Okay. Thank you. I
9 appreciate that.

10 CHAIRPERSON REID: But we will take it
11 under consideration.

12 MR. LYLES: Thank you very much.

13 CHAIRPERSON REID: Thank you. All
14 right. Persons and parties in support of the
15 application? Please come forward. How many people
16 are here in support of the application?

17 MR. LYLES: Who was provided? Ms.
18 Worsley is here and this gentleman here. We have
19 three left.

20 CHAIRPERSON REID: Three in support.

21 MS. KING: Has everybody been sworn in?

22 MR. LYLES: Yes. They all stood up at
23 the swearing in.

24 CHAIRPERSON REID: Please come forward
25 quickly if you wish to testify. You don't have to
26 testify.

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1 MS. KING: This is their opportunity.
2 These are people in support.

3 MR. CREASEY: Excuse me, I am ANC
4 commissioner Mike Creasey from 7D-01.

5 CHAIRPERSON REID: You are just
6 arriving? Okay, I am sorry.

7 MR. LYLES: Do these folks have to go
8 back?

9 CHAIRPERSON REID: Yes. Just sit right
10 back. Don't go too far. Let's allow the ANC
11 commissioner to come in and make his -- testify.
12 Sir, give your name?

13 MR. HART: I need to swear him in.

14 CHAIRPERSON REID: Oh, go ahead.

15 MR. HART: Sir, raise your right hand,
16 please.

17 (WITNESS IS SWORN.)

18 CHAIRPERSON REID: Your name and
19 address.

20 MR. CREASEY: Michael David Creasey, ANC
21 Commissioner, 7D-01.

22 CHAIRPERSON REID: You are a single
23 member district?

24 MR. CREASEY: Excuse me?

25 CHAIRPERSON REID: You are a single
26 member district representative?

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1 MR. CREASEY: That is correct.

2 MS. KING: And is the proposed church
3 site in your SMD or not?

4 MR. CREASEY: It is right abutting my
5 SMD. It is in 7D-02.

6 CHAIRPERSON REID: Okay. We have a
7 letter from -- we do have a letter from ANC 7D. Are
8 you familiar with that?

9 MR. CREASEY: Yes, I am from 7D. But my
10 single member district is 02.

11 CHAIRPERSON REID: And you have another
12 letter?

13 MR. CREASEY: It might possibly that you
14 had from Mr. William Wright, Commissioner Wright?

15 CHAIRPERSON REID: Yes.

16 MS. KING: We just read that into the
17 record.

18 CHAIRPERSON REID: We have just gone
19 over that. Do you have additional statements to
20 make?

21 MR. CREASEY: What I would like to say -
22 - speaking for myself, I have no problems with the
23 church. It seems like they could maybe work
24 something out with maybe the Metro parking facility
25 that is at the Minnesota Avenue subway station.
26 They could possibly think about having a shuttle

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1 from point A to point B. But in that stretch of
2 Benning Road, it would be quite congested to add a
3 parking lot beside the Benning National Park, the
4 historic park, Fort Mahon, which is part of the
5 lists of presidents -- Abe Lincoln's Civil War
6 Forts, and it is commissioned as such. And it is
7 also part of the Fort Circle Park, which runs
8 throughout pretty much all of 7D, which is Fort
9 Mahon and Fort Chaplin and Fort Dupont. So it is
10 all connected. If anything, we should try to
11 consider maybe strengthening the attributes of the
12 park and give the citizens there something
13 constructive they can do and take their children and
14 sit out instead of having a parking lot there.

15 MS. KING: Thank you very much.

16 CHAIRPERSON REID: Thank you. Wait, did
17 you have any questions?

18 MR. LYLES: We have no questions.

19 CHAIRPERSON REID: Okay. Park Service,
20 do you have any questions on cross examination of
21 the ANC?

22 MR. ROSENSTOCK: No questions.

23 CHAIRPERSON REID: All right. Thank
24 you. Persons and parties in support, please come
25 forward.

26 MS. KING: The three of you come forward

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1 now. Now you are on.

2 CHAIRPERSON REID: Can you try to
3 contain your remarks to three minutes? Three
4 minutes each?

5 MS. KING: But don't feel you have to
6 repeat what anybody else has said.

7 CHAIRPERSON REID: No. Please don't be
8 redundant. If one person has said something, please
9 don't reiterate the same thing. Give a different
10 point. Use your time to have the most efficient use
11 of the time, please.

12 MR. SMITH: My name is Allen Smith. I
13 am one of the trustees at the Holy Christian
14 Missionary Baptist Church and I live in the Ward
15 basically.

16 MS. KING: What is your home address?

17 MR. ALLEN: My home address is 225 57th
18 Place, N.E., Washington, D.C. I think that building
19 that church on that lot at Benning Road, N.E., would
20 be a very good thing to do from my vantage point
21 because it would offer not only aspects to different
22 community entities, but also aspects to the
23 community-wide. I think that the main concern as
24 far as the parking, looking at it from that vantage
25 point, I know we can get it done. I know we can
26 find a way to get around the parking concern

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1 regarding what the committee has made relevant. I
2 also believe that this church would be an
3 instrumental part within the city. Yes, there are
4 three or four churches within the area. I have no
5 idea what those churches are doing as far as
6 providing support to the community, but I know that
7 Holy Christian Missionary Baptist Church would do
8 just that. They would provide support to the
9 community. They would be able to enhance the
10 community in a better fashion, I think.

11 When we purchased the land in 1995, I
12 was one of the impetus to locating that land. I
13 basically was the one who said, we have property
14 there that we can purchase. So we bought the land
15 thinking that we could build a church there. It was
16 our hope that we would go forth and do likely. I
17 have been in the area since 1983, so I have been
18 there about 16 years. And yes there is the Fort
19 Mahon Park which is there. I feel that we can work
20 together with the Fort Mahon Park people. We can
21 also work together with the community to make sure
22 that we do what needs to be done for community
23 support. That is all I have to say.

24 CHAIRPERSON REID: Thank you.

25 MR. BELLOWS: Yes, my name is Arthur
26 Bellows. I live in the 7th District at 1012 49th

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1 Place, N.E. I am the chairman of the deacons at
2 Holy Christian Missionary Baptist Church. And I
3 just simply wanted to say that this church is a
4 great impact to the young people. I know right
5 behind the property you had that vacant school,
6 Woodson Junior High, which also has a parking space.
7 So maybe -- I don't know who is in charge of that
8 parking space. Just like they said, we can use the
9 Metro and run a shuttle. You can also park on that
10 school parking lot. That school is not being used.
11 With the Park Service, I never really even see no
12 activity or anything going on in the Park Service.
13 I have been there -- I have lived in D.C. all of my
14 life. So on behalf of the church, like it has
15 already been said, this church is a very helpful
16 church to the community. It would help the
17 community if given the opportunity. They have shown
18 that and they have proven that. I am quite sure
19 they will have no problems working out with
20 neighbors or the rest of the commercial sites there.
21 We can all work together if given a chance.

22 CHAIRPERSON REID: Thank you.

23 MS. WORSLEY: Good evening. My name is
24 Zella Worsley and I am a member of Purity Baptist
25 Church, the Reverend J. Terry Wyngate is my pastor.
26 I met Reverend Steve Young --

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1 MS. KING: Excuse me, would you give us
2 your home address, please?

3 MS. WORSLEY: 5373 Chillum Place, N.E.
4 20011. First, we built the Yumosha Drug Clinic
5 about six years ago and Providence Hospital runs
6 that program. And at the time, I guess about six
7 years ago, there seemed like there was so much
8 killings and it seemed like I was always going to a
9 funeral. I met Reverend Steve Young when he was
10 preaching to the youth at a funeral home and he was
11 trying to convey to them that it is time to stop
12 this killing and what they were doing and they
13 seemed to be listening. And I said, Lord, this
14 maybe is the vehicle that I have been looking for to
15 see if I can help stop some of this crime. So I
16 approached him, but I had a hard time getting to him
17 because of the youth that was around him. So I went
18 all the way to the grave site and I asked him -- and
19 plus, we had purchased a banquet hall out in
20 Northeast there, and I asked him, don't you want to
21 start your church and start seeing if you can speak
22 to some of these kids and bring them into your
23 church and talk to them and convince them to stop
24 shooting and killing one another and stop fooling
25 with these drugs? So he said he would think about
26 it, because he was like an assistant pastor

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1 somewhere else. But he really wasn't interested at
2 that time.

3 So I went to another funeral and I met
4 him again and I said we've got to help, we've got to
5 do something. I said, this drug treatment clinic is
6 just not enough. So I was convinced to talk to him.
7 So finally when I met him again, he said I have been
8 looking for you. He had lost my address and phone
9 number, because I gave it to him. And so I
10 convinced him to come and start at my banquet hall
11 and start seeing what he could do to these kids.
12 And sure enough, he started on a Sunday morning, and
13 he has drawn these kids. You should just go and
14 look. They are not old folks like me. They are
15 young children with children, children, children.
16 This is what we need. Somebody to get through to
17 these children. You know, and this man has been a
18 real help. Just go and see what he is doing to help
19 stop some of this killing. And I do believe he has
20 hope. Because in the time that I have brought him
21 to this church, it seems like some of it has
22 stopped. That is all I have to say.

23 CHAIRPERSON REID: Thank you. Thank you
24 very much. Just one second, please. Any cross
25 examination of these witnesses?

26 MR. ROSENSTOCK: No.

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1 CHAIRPERSON REID: Thank you. Is there?
2 Cross examination?
3 MR. CREASEY: Not so much a cross
4 examination just a --
5 MS. KING: Come forward.
6 CHAIRPERSON REID: No. No. This is the
7 time for cross examination and you have to ask them
8 questions. You can't speak at this time.
9 MR. CREASEY: Okay.
10 CHAIRPERSON REID: Thank you.
11 MR. CREASEY: The children and so forth,
12 when they were in --
13 CHAIRPERSON REID: Do you have a
14 question? Do you have a question here?
15 MR. CREASEY: Yes.
16 MS. KING: Relating to what they have
17 just said.
18 MR. CREASEY: Yes.
19 CHAIRPERSON REID: All right. Come on.
20 Come forward so they can hear you. Give your name.
21 MS. KING: And you have to identify
22 yourself for the reporter.
23 MR. CREASEY: ANC Commissioner Michael
24 David Creasey, 7D-01. The area in question that
25 they are referring they are from is over in 7C, and
26 the people that are pretty much in that area where

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1 they are talking about is 7C. That has nothing to
2 do with 7D. It would be nice if you could put that
3 --

4 MS. KING: A question.

5 MR. CREASEY: The question is why don't
6 you put the church in 7C, because we have all worked
7 on the Nannie Helen Burroughs task force that
8 Councilman Shavers had proposed, and there is a lot
9 of --

10 MS. WORSLEY: If you can find a space
11 there, we will.

12 MR. CREASEY: There is a lot of space.
13 There are a lot of buildings --

14 CHAIRPERSON REID: The question has been
15 answered. That is it. Thank you. You made your
16 point. Thank you. Thank you very much. Persons
17 and parties in opposition please come forward.

18 MS. KING: Wait. Did the Park Service
19 have any questions for these?

20 MR. ROSENSTOCK: No.

21 CHAIRPERSON REID: The Park Service, you
22 are in opposition?

23 MR. ROSENSTOCK: Yes.

24 CHAIRPERSON REID: Okay. Come forward.

25 MS. KING: Maybe we will hear from the
26 community first.

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1 CHAIRPERSON REID: Are you in
2 opposition? Well, come to this table. All right,
3 again, we ask that you try to keep your remarks to
4 around three minutes and please don't be redundant.
5 Your name and address, please.

6 MS. JOHNSON: My name is Ruth Barbara
7 Johnson.

8 CHAIRPERSON REID: You have to speak up,
9 Ms. Johnson, because we don't have a sound system
10 here.

11 MS. JOHNSON: My name is Ruth Barbara
12 Johnson. I live at 15 42nd Street, N.E., about two
13 blocks from the church. The traffic is what I am
14 concerned about. We cannot control our churches for
15 people coming to different functions. Benning Road
16 is a four lane highway and you have buses and cars
17 and there is houses on one side of the street. And
18 I am concerned about the traffic. People will
19 double park. I don't care how many single spaces
20 they have, they will double park, which will cause
21 problems as far as I am concerned. And that area is
22 heavily traveled. I have been in that area for 35
23 years and I have seen the growth, and I think it
24 should be given some heavy consideration with the
25 traffic especially. And with 800 people in a
26 church, you can rest assure that there is going to

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1 be oodles of cars and oodles of people and you
2 cannot control that when people are coming to
3 church. And with all these programs that he says he
4 is going to have, it is going to be not just on
5 Sunday. And when the funeral parlor has their
6 functions and then the Boys and Girls Club has their
7 functions, Benning Road will be jammed with traffic.
8 It is going to be dangerous. That is all I have to
9 say.

10 MS. WILLIAMS: My name is Reverend
11 Virginia Williams. I live at 4053 Benning Road,
12 N.E. I am directly across the street from the park
13 and right next door to me is two houses. The first
14 house is owned by my neighbor, Elsie Catrell, who is
15 in a nursing home. And adjacent to that one is a
16 house that burned down over 20 years ago and then
17 next to that is the vacant lot. I have been
18 instrumental in trying to keep the neighborhood
19 clean. My home is a very, very nice home. It has
20 been there since 1929. I am very active in my
21 community. Reverend Young came to my house and
22 approached my family in reference to the property
23 next door to me. I was not home at the times that
24 he came. I am in total opposition to a church
25 trying to purchase the property next door to me for
26 the purpose of a parking lot. Since I am on Benning

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1 Road, there is a lot of traffic. Stuart parks on
2 Benning Road when there is an overflow, which is
3 constant. There is a bus. There is a fire
4 department and all of that. I have no objection to
5 the church being on the hill. However, I do have
6 objections in terms of the parking because I am
7 affected. My nieces and my nephews and all of the
8 young people that come to my house will be adversely
9 affected. I, too, am interested in the property
10 next door and some of my neighbors are interested in
11 the property next door. We talked to the Marshall
12 Heights Community Development Service, who was
13 looking at that property in terms of putting houses
14 there, and I don't -- and I think that if anything
15 should be there, there should be a some houses, not
16 a parking lot where if I come right out my back door
17 or my side door, I would be looking right down on
18 that parking lot. And all of the neighbors -- they
19 are not here today, we will be in opposition to that
20 parking lot right outside of my door. And as I
21 said, there was a meeting at the Police Boys Club on
22 July 9. A letter went out to Reverend Young and his
23 congregation. No one from his congregation came to
24 address us at that meeting, where the ANC
25 commissioner was there and members of the community,
26 where we could ask him questions. We asked did the

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1 letter go out to him. A letter did go out to him,
2 but no one came to address it.

3 I know that they presented proposals and
4 all of that. But in terms of actually living there,
5 I don't think that these parking spaces are going to
6 be able to be accomplished. And I definitely
7 oppose. Now he has a right to go down and try to
8 buy the land next door to me, but I am also going to
9 be down there trying to buy the land too, because I
10 do not want this parking lot right next to my home.
11 And my home is the best home on Benning Road.

12 CHAIRPERSON REID: I hate to cut you
13 off, but you said that three times.

14 MS. WILLIAMS: Right. Well, I just want
15 to make sure --

16 CHAIRPERSON REID: We got it.

17 MS. WILLIAMS: That I am heard. And
18 Mrs. Stuart was also at that meeting and she said
19 that she had been approached by Reverend Young in
20 terms of using her parking lot, and she said that
21 she did not wish to have her parking lot used for
22 the church members.

23 MS. KING: Excuse me, what is your
24 address?

25 MS. WILLIAMS: My address is 4053.

26 MS. KING: Okay.

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1 MS. WILLIAMS: I am right across the
2 street. The park is right in front of my house. I am
3 adversely affected. And the lots that he is talking
4 about securing are right next door.

5 MS. KING: The ones that are contiguous
6 to your own property.

7 MS. WILLIAMS: Right.

8 MS. KING: I understand. Thank you.

9 MS. WILLIAMS: And we do have parking on
10 Benning Road. At certain times of the day you
11 cannot park on Benning Road, from 4:30 to 6:00. I
12 park on Benning Road. I park my car on Benning Road
13 overnight. And there are other people that come and
14 park their cars on Benning Road also. I jotted down
15 a few notes, but I just wanted to make sure that I
16 did bring out the main points.

17 CHAIRPERSON REID: Thank you.

18 MS. KING: Thank you very much.

19 MR. ROSENSTOCK: If there are other
20 members of the community that were waiting to
21 testify, I can --

22 CHAIRPERSON REID: I think these are the
23 only two that were here in opposition. Are there
24 any other members in opposition -- of the community?
25 Okay.

26 MS. KING: Madam Chair, could I suggest

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1 that the Park Service, which is a government
2 organization, should be given more than the three
3 minutes that are allotted to a neighborhood?

4 CHAIRPERSON REID: How much time do you
5 need?

6 MS. KING: He is a party to the case.

7 MR. ROSENSTOCK: I will try to be brief.
8 We have some issues --

9 CHAIRPERSON REID: Can you wrap it in
10 five minutes?

11 MR. ROSENSTOCK: I will do the very best
12 I can.

13 CHAIRPERSON REID: Okay. Well, just --
14 because I just wanted to make sure that everyone
15 understands why. The Park Service is a limb of the
16 Department of the Interior. So we will afford him a
17 little bit more time.

18 MR. LYLES: Excuse me, we didn't receive
19 one of those -- whatever he is passing out to the
20 Board.

21 CHAIRPERSON REID: Let's see, do you
22 have additional copies? The attorney for the church
23 should have a copy of whatever is being distributed.

24 MR. ROSENSTOCK: Not with me. Again, my
25 name is James Rosenstock and I am testifying for the
26 National Park Service. My colleague, Mr. Murphy,

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1 expresses his regrets. His daughter is flying off
2 overseas this afternoon and she very much wanted her
3 daddy to be there to see her off. So he was unable
4 to stay around.

5 CHAIRPERSON REID: You can adequately
6 represent the both of you.

7 MR. ROSENSTOCK: Well, I am not quite as
8 capable in terms of song and dance as Mr. Murphy,
9 but I will do the best I can. First of all, I need
10 to say that my discomfort level here right now is
11 quite high. I am not comfortable opposing a church
12 and its good works. However, that is indeed the
13 case. The application for variances, which is what
14 we are opposing, it is clear that what we have here
15 is a building that is far too large for a site that
16 is far too small and far too steep. There are also
17 some issues of the adjoining properties. Both the
18 residential, as you have heard, and the National
19 Park Service, which borders it on two sides.

20 In the package I gave you, the first is
21 a letter from my superintendent, John Hale, opposing
22 the variances here. To synopsise that, we are
23 really concerned about initially how the applicant
24 has gone about the initial stages of this. We heard
25 -- we were surprised in early April to find that
26 massive clearing had taken place on this site and a

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1 trespass had occurred on those District right-of-way
2 and National Park Service land as well. Apparently,
3 the applicant had not done a proper survey before
4 undertaking a rather haphazard clearing of the site.
5 A couple of days later, the architect and the pastor
6 were to the park with a request for the National
7 Park Service to provide them a written parking
8 agreement in order to get past the variances that
9 are now before you. Of course, we cannot in writing
10 consign public land for private uses.

11 We did express our concerns at that time
12 of the tree cutting of Park Service trees and the
13 trespass on park land and expressed our desire that
14 the applicant remain in close touch with us as this
15 process went forward so that we could resolve both
16 prior issues and plan for the church. We are
17 frankly quite concerned at the scope of this
18 project.

19 Since our letter went to the applicant
20 saying that we could not grant the parking
21 privileges, we have not heard from the applicant.
22 Following the letter from John Hales, that initial
23 letter, asking the applicant to work closely with us
24 and explaining why we could not grant written
25 parking agreements for that kind of commitment of
26 park service land.

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1 There is also a case incident record
2 from the U.S. Park Police on the tree cutting
3 incident, and a diagram that shows the properties.
4 This is a xerox from the D.C. land records, I
5 believe. What I have drawn in green was the
6 formerly unbuilt D.C. alley right-of-way. In yellow
7 is National Park Service land above that, which was
8 also cleared during this time.

9 Running above that is the Fort Circle
10 Park's hiker/biker trail. The built portion of the
11 alley kind of loops up above actually onto Park
12 Service land and joins this hiker/biker trail. And
13 basically in this incident the applicant cleared all
14 the way up to that point and took down a number of
15 Park Service trees.

16 I have enclosed a reprint from a book
17 entitled, "Mr. Lincoln's Forts", which documents the
18 historic earthworks that were put in around this so-
19 called Fort Circle area of Washington, D.C., the
20 hastily constructed Civil War defenses of the Union.
21 Fort Mahon was the northern-most one of these forts
22 in Anacostia. It was on a promontory that guarded
23 the entrance to D.C. by the Bennings Bridge, what is
24 known as Benning Road now, and Eastern Branch Road,
25 which is now known as Minnesota Avenue. It was a
26 critically important fort in the defense of the

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1 Nation's Capital in the Civil War. Some of that
2 fort no longer exists because of playground area
3 further up. There are, however, obvious earthwork
4 remains right off of the Fort Circle Trail, and just
5 above the applicant's property.

6 If you will go to the photographs I have
7 here, this is what the property looks like from
8 Benning Road at this point, and you can see the
9 nature of the clearing job. The automobile you can
10 see parked up in the alley is the end of the built
11 portion of the alley. Clearing went on beyond that
12 on the alley right-of-way and in the National Park
13 Service right-of-way. You will notice also that
14 this property is not posted. I know that is a
15 technicality, but it is also indicative of the level
16 of communication that we have had.

17 The hiker/biker trail, the so-called
18 Fort Circle Trail, runs just past -- just beyond
19 42nd Street. The Fort Circle Trail approaches the
20 earthworks at Fort Mahon. We have a sign noting
21 that the earthworks are visible, and there is a spur
22 trail that goes directly above the applicant's
23 property and onto the historic earthworks. This is
24 just before you get past the applicant's property
25 what the trail looks like. You can see some
26 earthworks here -- more obvious earthworks. Above

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1 approximately 41st and Benning.

2 Here we have a picture taken from the
3 spur trail of Fort Circle that shows the cleared
4 property as it is now. Yours truly standing by a
5 Park Service cherry tree of pretty serious diameter
6 that was a critical screen for the Fort Circle
7 Trail. Now the Park Service does not object to the
8 church's construction of an appropriate facility on
9 their private property, but we have serious concerns
10 about this property. Frankly, the building is far
11 too large. The slopes are steep. The land in this
12 area is notorious for being highly erosive. There
13 plans also, if you will direct your attention to the
14 chart my friend Mr. Murphy drafted up for me just
15 yesterday evening. The Fort Circle Trail comes from
16 beyond here and then comes past -- this is the spur
17 that takes you to the earthworks. These are
18 approximate locations of some of the reigning
19 earthworks, most likely rifle trenches, that were
20 set up to protect the approach to Washington, D.C.

21 We are very concerned about the plans of
22 this structure. The terracing -- the so-called
23 retaining wall that will be of heights between 5 and
24 8 and 12 feet along here. Frankly, there is no room
25 for mitigation or revegetation at this point. There
26 will be -- we are very concerned that

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1 archaeologically sensitive Park Service land may be
2 subject to erosion just by the very construction of
3 this. This is not a retaining wall constructed on
4 their property. This is building into the D.C.
5 alley right-of-way, directly abutting Park Service
6 land.

7 Basically it is a very large intrusion
8 on a very nice historical park. This is a National
9 Register Historic Places site, by the way.

10 MS. KING: Have you had a meeting with
11 the church people?

12 MR. ROSENSTOCK: Yes, we did. They came
13 to us --

14 MS. KING: They came asking for parking?

15 MR. ROSENSTOCK: Requesting parking.
16 And we discussed the issues of the clearing and
17 expressed concern about the general nature of the
18 building and we put -- we sent them a letter saying
19 that we were concerned. We thought that this could
20 be a successful project, but they needed to work
21 closely with us.

22 CHAIRPERSON REID: The letter from your
23 supervisor John Hale addressed those issues without
24 his testimony.

25 MR. PARSONS: Mr. Rosenstock, let me
26 understand. I guess I understood this retaining

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1 wall to be on the side of the alley that is on their
2 property. In other words, the road would be here,
3 the retaining wall, and the park beyond. Is it your
4 understanding that the retaining wall is abutting
5 the Park Service property?

6 MR. ROSENSTOCK: As best I could read
7 from the blueprints, yes, sir. I see a retaining
8 wall directly abutting the National Park Service
9 property.

10 MR. PARSONS: So then the alley would be
11 lower than the Park Service land in your scenario,
12 rather than at the same grade?

13 MR. ROSENSTOCK: That is what it appears
14 to me, yes, sir. Significantly lower. Such that
15 without a fence, it would clearly constitute a
16 hazard to the users of the Fort Circle Trail.

17 MR. PARSONS: I assume in order to
18 construct this kind of retaining wall, they would
19 have to get permission from the Park Service to go
20 back into their land to --

21 MR. ROSENSTOCK: Well, that is
22 archaeologically sensitive land. There is not any
23 way that we could give that kind of permission.

24 MR. PARSONS: Okay.

25 MR. ROSENSTOCK: That is -- there are
26 historic earthworks from the Civil War literally a

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1 stone's throw from that point.

2 MR. PARSONS: I want to make sure. You
3 are not objecting to the development of this
4 property. The Park Service isn't about to acquire
5 it or try to bring it into park land. I mean, it is
6 zoned for use. It is just that this structure is
7 too large, is that correct?

8 MR. ROSENSTOCK: No, sir. In fact in
9 the letter, we absolutely did not oppose the
10 construction of worship facilities on private
11 property, and indeed park land is bordered by
12 churches in many parts of this city. We enjoy good
13 neighbor relationships almost exclusively.

14 MR. PARSONS: Thank you.

15 CHAIRPERSON REID: Any other questions,
16 Ms. King?

17 MS. KING: The ANC raised the question
18 of the stability of the soil and ecological and
19 environmental issues and so forth. Do you share
20 those concerns?

21 MR. ROSENSTOCK: Oh, absolutely, yes.
22 The soils throughout that entire portion of town are
23 highly erosive. There is lots of anomalous water
24 springs, seeps. Everybody in the area has sump
25 pumps in their basements. Some people have three or
26 four. It is -- there are difficult conditions with

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1 soils and waters there certainly. Ecologically, it
2 is -- we have very nice woods in that area.
3 Frankly, it is primarily soils and water and the
4 great potential for damage to adjoining property and
5 erosion onto other properties that would concern us.

6 MS. KING: Thank you.

7 CHAIRPERSON REID: Thank you very much.
8 Any cross examination?

9 MR. LYLES: Yes. Your name, again, sir?

10 MR. ROSENSTOCK: James Rosenstock.

11 MR. LYLES: Mr. Rosenstock, what is your
12 background educationally?

13 MR. ROSENSTOCK: I studied mathematics
14 in college. I came to work with the National Park
15 Service and have been trained in the field ever
16 since.

17 MR. LYLES: Okay. And what have been
18 your major assignments with the Park Service?

19 MR. ROSENSTOCK: Well, I did public
20 tours and programs at a place called Oxon Hill Farm
21 for about 15 years. For about the past six years, I
22 have done natural resources work, including
23 vegetation surveys and wetlands, tree protection
24 plans at Piscataway Park, adjoining areas issues and
25 park lands all throughout D.C. and Maryland.

26 MR. LYLES: And how many years have you

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1 been with the Park Service?

2 MR. ROSENSTOCK: 20 plus.

3 MR. LYLES: How many years have you been
4 doing what you do now with regard to Mahon and the
5 Fort Circle Trail?

6 MR. ROSENSTOCK: Six years, sir.

7 MR. LYLES: Six years. Okay. So you are
8 not an architect by trade?

9 MR. ROSENSTOCK: No, sir.

10 MR. LYLES: Okay. You are not -- you
11 have no experience directly with soil erosion
12 patterns on sites like this?

13 MR. ROSENSTOCK: Oh, yes, sir.

14 MR. LYLES: What is your experience with
15 that?

16 MR. ROSENSTOCK: Yes, sir. We have
17 problems with soil erosion in many of the hillside
18 parks. And basically it has been my practical
19 experience in the field that by the nature of the
20 clay and gravel soils and the clay lenses, that the
21 hydrological patterns coming through, that once you
22 cut into these soils, there are often great
23 problems.

24 MR. LYLES: So what is your experience
25 with retaining walls and architecture as it relates
26 to those soil erosion patterns?

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1 MR. ROSENSTOCK: That they are touchy to
2 construct and --

3 MR. LYLES: Have you ever constructed
4 any buildings yourself or been involved in the
5 construction?

6 MR. ROSENSTOCK: No, but I have --

7 MR. LYLES: Have you been involved in
8 the construction of buildings on soil issues or soil
9 erosion areas that you have just described?

10 MR. ROSENSTOCK: I have been involved
11 with the permitting and park projects that have
12 involved such like along Baltimore-Washington
13 Parkway at Route 197. I have had personal
14 experience of the great difficulties in encountering
15 soil erosion once a slope has been cut into and in
16 situations similar to this.

17 MR. LYLES: Okay. Now where the Park
18 Service maintains that there is an alleyway, do you
19 know what grade of slope that is between the
20 alleyway and the Park Service park land?

21 MR. ROSENSTOCK: No, sir. I don't have
22 that information.

23 MR. LYLES: Okay. Are you aware of the
24 distance of the building by looking at this chart
25 and the other charts the architects have provided
26 you -- the distance of the building to Park Service

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1 property? Do you know that?

2 MR. ROSENSTOCK: No. I don't know what
3 the setback of your building is. I understand you
4 need a variance for it. So it is close to the back
5 of your property line.

6 MR. LYLES: That is all right. No
7 further questions. Now with respect to the area
8 where you said trees were cut, are you aware of how
9 many trees were cut down in that particular area
10 that you allege is Park Service property?

11 MR. ROSENSTOCK: I don't have an exact
12 count, sir.

13 MR. LYLES: Okay. Can we see from your
14 pictures that you provided what trees were cut?

15 MR. ROSENSTOCK: You can get an idea of
16 it. I don't have an exhaustive account. Like I
17 say, the property has not been surveyed.

18 MR. LYLES: That is all. No further
19 questions. With respect to --

20 MS. KING: Let him answer you.

21 MR. LYLES: He did answer my question.

22 MS. KING: He is answering your question
23 and you interrupted him when you started --

24 MR. LYLES: He said no. He said he did
25 not know the number of trees. He has answered my
26 question.

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1 MR. ROSENSTOCK: The reason I did not
2 know the number of trees, sir, is that the property
3 has not been properly surveyed.

4 MR. LYLES: Oh, okay. So when we talk
5 about where your land begins and where our land ends
6 and where our land begins and your land ends, what
7 are you using to determine what that is?

8 MR. ROSENSTOCK: We are using the D.C.
9 lands map that you have there. It is quite clear
10 from out on the site --

11 MR. LYLES: This here?

12 MR. ROSENSTOCK: Yes, sir.

13 MR. LYLES: Okay. And so this D.C.
14 lands map -- you haven't properly surveyed the land,
15 but using this are you saying then for the Board
16 that the area where trees were cut down were in this
17 little bump here?

18 MR. ROSENSTOCK: Yes, sir.

19 MR. LYLES: This bump in the road.
20 Okay.

21 MR. ROSENSTOCK: And within the green
22 area that is D.C. right-of-way.

23 MR. LYLES: Okay. So the green area is
24 D.C. right-of-way and you don't have any authority
25 or control over that area, correct?

26 MR. ROSENSTOCK: No, sir.

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1 MS. KING: But neither do you, sir.

2 MR. LYLES: Okay. But we are here about
3 his issues.

4 MS. KING: I understand.

5 MR. LYLES: And that has to do with his
6 trees being cut down. So we are just trying to
7 determine whether or not he knows how many trees and
8 what effect. He is the one making the case that
9 there was a drastic effect on some trees being cut
10 down. Our argument was that there wasn't a drastic
11 effect and there was an innocent mistake. Given
12 that if you look at this plot here, there is a row
13 which indicates Fort Mahon Trail Park, but no
14 indication that Park Service leaps over the road and
15 abuts the city property. This is a very small area
16 as they provided you. So we are just asking
17 questions to see exactly what he is trying to prove
18 here. I don't have any other questions at this
19 time.

20 CHAIRPERSON REID: Okay. Thank you.

21 MS. BAILEY: Madam Chair, may I please
22 ask one question of Mr. Rosenstock?

23 CHAIRPERSON REID: Sure.

24 MS. BAILEY: Mr. Rosenstock, it seems as
25 if you are having difficulty with any kind of
26 building on that site. What would you like to see

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1 on that site? Certainly it is not a church --

2 MS. KING: Beverly, I don't think that
3 is germane. What he wants to see on the site is not
4 germane. What you and I want to see or what John
5 and Sheila want to see is not germane.

6 MS. BAILEY: I guess my concern is, Ms.
7 King, can anything be built on that site?

8 MR. ROSENSTOCK: Absolutely. That is
9 privately owned property and it can be developed as
10 a matter of right.

11 CHAIRPERSON REID: I think that the
12 issue was the mass of this particular structure on
13 that particular site. Correct?

14 MR. ROSENSTOCK: Yes, ma'am. Yes,
15 ma'am.

16 CHAIRPERSON REID: All right.

17 MR. LYLES: I have just one additional
18 question for Mr. Rosenstock. What would you
19 consider -- what do you consider is massive?

20 MR. ROSENSTOCK: A building that cannot
21 be built within the bounds of the zoning regulations
22 of the site. It is -- that is the reason we are
23 here, sir.

24 MR. LYLES: I have one further question
25 for the lady in the middle from the ANC. You said
26 that the ANC sent a letter to Holy Christian

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1 Missionary Baptist Church?

2 MS. WILLIAMS: I have a copy of the
3 letter that was sent out and all -- and I think they
4 said they sent it out twice.

5 MR. LYLES: Do you know the date that
6 the letter was sent?

7 MS. WILLIAMS: I don't know the date
8 that the letter was sent, but the meeting was July
9 9.

10 MR. LYLES: Okay. But you don't know
11 when the letter was sent?

12 MR. CREASEY: I might be able to answer
13 that. I believe that letter was sent -- ANC
14 Commissioner Mike Creasey, 7D-01. To the best of my
15 knowledge, that letter was hand-delivered to one of
16 their people. I am not sure who, but it was sent.
17 Because our ANC office is in their 7C district, and
18 we do rent the building. The building that she
19 owns, we have an office there. So it is really no
20 thing where we should have a miscommunication. And
21 I believe she has spoken with Ms. Diane McCain,
22 Commissioner Diane McCain of 7D-02. But they were
23 aware of the meeting.

24 MR. LYLES: And you -- where is your
25 experience about their awareness of the meeting?
26 How do you come by your knowledge?

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1 MR. CREASEY: I am ANC commissioner and
2 I help draft the letters and so forth.

3 MR. LYLES: Did you deliver the letter
4 yourself?

5 MR. CREASEY: As I just stated, I
6 believe that Commissioner Diane McCain --

7 MR. LYLES: Is she here in the room
8 today?

9 MR. CREASEY: No.

10 MR. LYLES: Okay. And you didn't
11 deliver the letter yourself. Could I ask you, was a
12 call made to Holy Christian Missionary Baptist
13 Church?

14 MR. CREASEY: Not by myself.

15 MR. LYLES: No further questions.

16 MR. CREASEY: Could I ask him a
17 question?

18 CHAIRPERSON REID: Well, no. That
19 actually -- his time for cross examination really
20 should not have included the questioning of you.
21 But that is okay. All right. Now we will have
22 closing remarks by the applicant.

23 MR. LYLES: We appreciate the
24 opportunity to come before you today and present our
25 case with respect to the variances. We think that
26 we have provided if not ample justification, some

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1 justification for granting the variances. We would
2 appreciate your kind consideration of both the rear
3 yard setback variance request and also with regard
4 to the parking. We would just hasten to add,
5 though, that our attempts to deal with the community
6 and to sit and talk with the community and the Park
7 Service may not have been to the extent that those
8 organizations would have liked, but that is not
9 because we did not try to do that. And we will
10 continue to do that so that we can be integrated
11 greatly into the community. We would just ask that
12 our request for the rear yard setback from 12.8 to
13 12 feet be granted and also our parking request for
14 a variance from 82 spaces to 16 spaces also be
15 granted, and we appreciate coming before you today.

16 CHAIRPERSON REID: Let me ask you a
17 question before we end this. Was the property
18 posted?

19 MR. LYLES: When you say posted?

20 CHAIRPERSON REID: For this hearing.

21 MR. LYLES: Oh, yes it was. Yes, it
22 was. There was some discrepancy as to the date, but
23 the 28th -- it didn't have to be posted on the 28th.
24 It had to be posted on the --

25 CHAIRPERSON REID: For 13 days rather
26 than 15.

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1 MR. LYLES: Well, it had to be posted 15
2 days. But the difference between the --

3 MR. HART: They were one or two days
4 late.

5 CHAIRPERSON REID: But it was posted?

6 MR. HART: Yes. It was posted, yes.

7 MR. LYLES: Yes, it was definitely
8 posted, yes. And it didn't have to be posted on the
9 28th as the Park Service maintains. It had to be
10 posted in July.

11 CHAIRPERSON REID: Okay. Do you have a
12 survey -- a land survey of that particular parcel?

13 MR. LYLES: Yes, we do. But the
14 architect, I think, may have taken it with him. We
15 can supplement the record as soon as we can get to
16 the architect today.

17 CHAIRPERSON REID: If you had a survey -
18 - okay, I don't understand. If you do have a
19 survey, then why was there a problem with the --

20 MR. LYLES: Well, because the city
21 survey is incorrect and that is where the problem
22 is.

23 CHAIRPERSON REID: The property lines.

24 MR. LYLES: Yes. The city surveys show,
25 as the Park Service alluded to in his conversation,
26 it shows that there is this bump in the property,

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1 and it is not properly identified who that bump
2 belongs to. So the city documents that we had and
3 we relied upon when cutting down the trees was
4 incorrect.

5 MS. KING: Okay. You better supply
6 that. Because none of the maps that we have shows
7 any bump of any variety that could possibly be
8 construed to be anything.

9 MR. LYLES: And that is what I am
10 saying. That is part of the problem. The alley
11 does not belong to the park, but it is not shown on
12 the --

13 MS. KING: But it also doesn't belong to
14 you.

15 MR. LYLES: We know that. But we didn't
16 cut trees down --

17 MS. KING: Would you -- I would like to
18 have that -- the survey that shows -- that does not
19 show -- that shows that you have a bump of property
20 going into the Fort.

21 MR. LYLES: Sure.

22 MS. KING: We would like to see a copy
23 of that, sir.

24 MR. LYLES: Sure.

25 CHAIRPERSON REID: All right. Are you
26 done?

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1 MR. LYLES: Yes, we are.

2 CHAIRPERSON REID: Thank you.

3 MR. LYLES: Thank you.

4 CHAIRPERSON REID: Excuse me, that is
5 the end of the case. It concludes with the closing
6 remarks by the applicant.

7 MR. CREASEY: I just wanted to say --

8 CHAIRPERSON REID: You can discuss that
9 with staff and they will make sure that we receive
10 the information. Ms. King, you had said something
11 about the applicant trying to acquire additional
12 property. So I am thinking --

13 MS. KING: Well, it becomes even more
14 problematic because the woman who lives next to some
15 of the property that they have their eye on
16 acquiring is going to oppose it. So it would be yet
17 another case, because they would have to get
18 permission in that residential area to have a
19 parking lot, and there would be opposition at least
20 from one party whose property abuts.

21 CHAIRPERSON REID: But they were -- they
22 identified three or four possible sites that could
23 accommodate the parking. The question or what I was
24 about to say, and I will ask Mr. Parsons this, if we
25 would like to give some additional time for them to
26 acquire additional parking space before making the

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1 decision? They say that they possibly can. And if
2 that is the case, then we could postpone a decision
3 and give them --

4 MS. KING: Postpone a decision until the
5 first week in September?

6 CHAIRPERSON REID: Well, that would be
7 the normal date.

8 MR. PARSONS: Well, that gives them the
9 impression that if they go out and sign a contract
10 with Safeway, we will approve the application and I
11 am not sure that is where I am.

12 CHAIRPERSON REID: All right. Where are
13 you?

14 MR. PARSONS: As I expressed to the
15 Reverend, I think it is too big a building for the
16 site. I think they ought to reconsider the size of
17 the church and get on with their mission. Certainly
18 a church of 400 to 500 seats would probably work
19 here. I am not going to design it. But with
20 adequate parking and a better fit on the property so
21 that they don't have to hold it up with big
22 retaining walls and so forth. So I would be in
23 favor of denying the application if you want to know
24 where I am coming from. So urging them to get
25 parking elsewhere I think is problematic.

26 MS. KING: I don't buy into that. I

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1 think that --

2 CHAIRPERSON REID: So the modification
3 of the size, then, which would allow them to build a
4 matter of right? And they won't have to even come
5 back here?

6 MR. PARSONS: The zone would. I mean, I
7 don't know.

8 MS. KING: I mean, depending upon -- I
9 mean, if they build a smaller church, they could
10 have more parking spaces. They could have one for
11 every 10 people or something like that. And
12 presumably they wouldn't have to have that 8-foot
13 variance in the rear. And then they could do it as
14 a matter of right without reference to this.

15 CHAIRPERSON REID: Okay. Are you saying
16 to tell them today?

17 MR. PARSONS: That is all right with me.
18 I would move that we deny the application.

19 MS. KING: I will second that for all
20 the reasons that we have discussed.

21 CHAIRPERSON REID: All right. All in
22 favor?

23 MR. PARSONS: Aye.

24 MS. KING: Aye.

25 CHAIRPERSON REID: If I abstain -- I
26 would like to abstain on this one.

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1 MR. PARSONS: Then by all means do.

2 CHAIRPERSON REID: All in favor, aye. I
3 am sorry, all in favor -- you all just voted. All
4 opposed? And I will abstain.

5 MS. KING: Don't we have to have three
6 votes? We have to have three votes. It is a five
7 member board.

8 CHAIRPERSON REID: We have to have three
9 votes to pass it. If we don't have three votes, it
10 is the lack of a --

11 MS. KING: Oh, I see. So it fails for
12 lack of --

13 CHAIRPERSON REID: Lack of a majority.

14 MS. KING: Is that correct? Is Sheri
15 here or has she disappeared?

16 MR. HART: It actually fails. It fails.

17 MS. KING: The motion fails. And,
18 therefore, you are not --

19 CHAIRPERSON REID: We record two in
20 favor and one abstention.

21 MS. KING: Therefore, the motion fails -
22 -

23 CHAIRPERSON REID: For lack of majority.

24 MS. KING: The motion fails, and the
25 motion is to deny.

26 CHAIRPERSON REID: Right.

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1 MS. KING: So your opposition approves
2 this project.

3 CHAIRPERSON REID: No. I am abstaining.

4 MS. KING: That is what I am saying.

5 CHAIRPERSON REID: So your motion was to
6 deny.

7 MS. KING: There is no -- we have taken
8 no action. You can't take action with just two
9 votes. Because it is a five member board. We need
10 two votes.

11 CHAIRPERSON REID: All right. Okay.
12 Let's start over again. All in favor of the motion
13 to deny?

14 ALL BOARD MEMBERS: Aye.

15 CHAIRPERSON REID: All opposed? Okay.

16 MR. HART: Staff will record the vote as
17 three to zero to deny, Ms. King, Mr. Parsons and Ms.
18 Reid.

19 MR. LYLES: Excuse me, is that on --
20 which variance is that on?

21 MS. KING: On all of them.

22 CHAIRPERSON REID: Well, it had to be on
23 both because it wouldn't serve any purpose to
24 approve one and not the other.

25 MR. LYLES: Well, it would help us if we
26 had to come back, though. We would be for one

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1 variance rather than two.

2 MS. KING: No. We have denied both
3 applications.

4 MR. LYLES: It wasn't clear on the
5 record.

6 MS. KING: The case is denied. And, you
7 know, I sympathize with your reluctance, and I am
8 not happy about it either.

9 CHAIRPERSON REID: Oh, yes.

10 MS. KING: But it is just too massive
11 for that site.

12 CHAIRPERSON REID: Just for the record,
13 I think that it is certainly a very worthwhile
14 endeavor. But I just -- we have to go by the
15 regulations. Our hands are tied and there is
16 nothing to convince us that that particular church
17 or that size church can work with the parking that
18 is required at this time.

19 MR. LYLES: Thank you very much.

20 MS. KING: Thank you.

21 CHAIRPERSON REID: We will recess for 10
22 minutes.

23 (Whereupon, at 3:41 p.m. off the record
24 until 3:56 p.m.)

25 CHAIRPERSON REID: We will resume the
26 afternoon session.

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1 UNKNOWN SPEAKER: Good morning -- good
2 afternoon, Madam Chair and members of the --

3 MS. KING: Good evening. The case
4 hasn't been called.

5 CHAIRPERSON REID: Do you have a
6 preliminary matter as it pertains to this particular
7 case? If you will let Mr. Hart call the case. Mr.
8 Hart will call the case and swear everyone in who is
9 involved in this particular case. And then if you
10 have a preliminary matter, I will allow you to speak
11 at that time.

12 MR. HART: Application No. 16475 OF 403
13 C Street, N.E., L.L.C., pursuant to 11 DCMR 3107.2
14 for a variance from the maximum allowable floor area
15 ratio and from the parking requirements under
16 Section 771.2, 1203.3, and 2101.1 for the
17 construction of an office building in a CAP/C-2-A
18 District at premises at 403 C Street, N.E., Square
19 814, Lot 825. Would those persons intending to
20 testify in this case please stand and raise your
21 right hand to take the oath?

22 (WITNESSES ARE SWORN.)

23 CHAIRPERSON REID: Okay, preliminary
24 matters?

25 MS. SCHMIDT: Could you allow me to
26 approach because my hearing --

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1 CHAIRPERSON REID: No. You have to
2 speak from there so everyone can hear you. Give
3 your name and address.

4 MS. SCHMIDT: Janet Schmidt, 14 4th
5 Street, N.E. 403 C Street lies in my single member
6 district. It has come to my attention this
7 afternoon prior to the meeting that there are
8 concerns of the Peabody School, the Parent Teacher
9 Association and other bodies, that were not brought
10 to the attention of the ANC. In error,
11 communication had been sent to ANC Commissioner Gus
12 Ventura. It was not his single member district.
13 The parties -- these interested parties have not had
14 an opportunity to be heard on the matter. They are
15 concerned with respect to the parking variance and
16 safety of the children because this property would
17 be required under present law to have 11 parking
18 spaces. They are concerned, the PTA, with respect to
19 shuttling students and the safety of the children
20 with increased traffic. They would like the
21 opportunity for the 6A Commission to hear their
22 position and their concerns before we take a
23 position with respect to being opposing or proposing
24 this variance. So at this time, the 6A Commission
25 is withdrawing their support of this and asking for
26 a postponement so the parties have the opportunity

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1 to air their concerns with respect to the safety of
2 the children.

3 MS. KING: Is the PTA or whatever
4 represented here today? Are they here?

5 MS. SCHMIDT: Yes.

6 CHAIRPERSON REID: Okay. You are saying
7 that the notice was inadvertently sent to --

8 MS. SCHMIDT: ANC Commissioner Gus
9 Ventura, who it was not his single member district.
10 In addition --

11 CHAIRPERSON REID: And it should have
12 been sent to you?

13 MS. SCHMIDT: Yes. In addition, it has
14 come to my attention that the posted sign did not
15 address the parking areas requested -- the notice
16 for the hearing today.

17 CHAIRPERSON REID: What did it address?
18 Just one second, please.

19 MR. BROWN: Madam Chair and members of
20 the Board, my name is Patrick Brown from Greenstein,
21 DeLorme & Luchs. I'd like to respond to the
22 preliminary matter. One, the applicant made a
23 presentation to ANC 6A earlier in the month. There
24 was a quorum present. There is a letter in the file
25 where they came out voting in support without
26 reservation. To come at the day of the hearing

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1 without having another meeting or any opportunity is
2 inappropriate. They have had their meeting voted
3 with one member voting not present, but otherwise
4 unanimously, and I quote the letter -- "In support
5 without reservation." So that they can't now change
6 their mind and cause this hearing to be continued.
7 Can I add one other thing? I don't want to belabor
8 the point. Clearly everybody -- the entire
9 commission had complete notice of this case. They
10 acted upon it based on that notice. So the fact
11 that one SMD got the application and not the other
12 doesn't at the end of the day mean anything, because
13 the entire group, it is my understanding, heard and
14 acted on the matter. That is not to say that we are
15 here to prevent anybody who is interested, and there
16 have been discussions with the Peabody PTA group
17 about their issues. We are not here to prevent
18 anybody from appearing and testifying and making
19 their thoughts known. But for the ANC to come in at
20 the last minute and withdraw their vote of support I
21 think is inappropriate.

22 MS. KING: Excuse me, madam, what is
23 your name?

24 MS. SCHMIDT: Janet Schmidt.

25 MS. KING: And you voted yes on this?
26 You are the single member district person?

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1 MS. SCHMIDT: Yes. May I correct the
2 characterization, please? What happened that
3 evening was that I was not advised that this was my
4 single member district and did not have an
5 opportunity to consult with interested parties and
6 homeowners in the community. We decided since none
7 of the Board members had this opportunity to hear
8 from the community that we would follow the decision
9 of the Stanton Park Neighborhood Association. So
10 what we voted to do was not unanimously support
11 this, but we voted to follow the decision of the
12 Stanton Park Neighborhood Association. And we did
13 that and the minutes of our meeting reflect that.
14 We took that position because we felt that the
15 Stanton Park Neighborhood Association did have the
16 opportunity to hear from the community, and we
17 wanted to assist Mr. Scallan in moving forward and
18 not hold him up if Stanton Park Association agreed.
19 We have been advised today that in fact Stanton Park
20 did not speak or meet with the PTA. And so, for
21 that reason, we nor Stanton Park in their
22 recommendations had the opportunity to hear from the
23 PTA, the school, the parents and the homeowners.

24 CHAIRPERSON REID: Okay. But the PTA --
25 the members of the PTA are here today?

26 MS. SCHMIDT: We have one member.

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1 CHAIRPERSON REID: Okay. Then why could
2 they not just testify today in support or
3 opposition?

4 MS. SCOTT: If I -- my name is Laura
5 Scott. I am the chair of the LSRT. Our concern is
6 --

7 MS. KING: Of the what?

8 MS. SCOTT: Of the Local School
9 Restructuring Team of the Capitol Hill buffer
10 school.

11 MS. KING: What does that mean? What is
12 that?

13 MS. SCOTT: It is a body elected by the
14 parents and teachers of the local school. DCPS is
15 the --

16 MS. KING: It is public schools?

17 MS. SCOTT: Yes, these are public
18 schools.

19 MS. KING: And the Peabody is a District
20 public school?

21 MS. SCOTT: Yes, it is. By part of the
22 Capitol Hill cluster schools. Our concern with the
23 opportunity to speak today as opposed to returning
24 it to the ANC is the great weight that is given to
25 the ANC's vote. As they have said without
26 reservation that that is going to be given great

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1 weight, perhaps greater weight than what we say
2 today.

3 CHAIRPERSON REID: But how --

4 MR. PERNELL: Madam Chair?

5 CHAIRPERSON REID: One second, please,
6 Pernell. How can we, without any letter -- another
7 letter from the ANC reversing their previous
8 position -- there is nothing -- we don't have
9 anything to allow us to do that. Because what we
10 have in our file is the position of the ANC.

11 MR. BROWN: And that is exactly the
12 point, Madam Chair. You impose some strict
13 standards in what is an appropriate ANC response
14 with the quorum and certain other issues, notice and
15 whatever. And to judge one letter by one standard,
16 which imposes rather high standards which are met by
17 this letter, I believe, and then to judge by a
18 lesser standard what was occurring today doesn't
19 seem appropriate. And it basically -- for an
20 applicant, whether it is this applicant or any other
21 applicant, it doesn't mean anything if you go to the
22 ANC and make a presentation and get a vote. Because
23 if circumstances change, they can change their mind.
24 And I think if you are going to do it, it has to be
25 the same way each way.

26 CHAIRPERSON REID: Well, Mr. Brown, I

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1 have no problem with that, even if in fact the ANC
2 had submitted a subsequent letter to reverse the
3 first position, which we don't have.

4 MR. BROWN: Yes.

5 MS. KING: What was the vote for the
6 first position? Just two members who voted yes on
7 the 7th of July changed their minds this afternoon.

8 CHAIRPERSON REID: If they felt strongly
9 enough about it, I would think that they would have
10 sent a subsequent letter reversing their decision.

11 MR. PERNELL: Madam Chair, Daniel
12 Pernell of the 6A Commission. I was present at that
13 meeting. That was a combined meeting with our
14 subcommittee on that day, July 7. We were acting as
15 a body according to the requirements from the BZA to
16 comply within 7 days before the hearing date and we
17 were trying to do that. At the same time, we were
18 trying to be fair to the constituents in the area.
19 At the last minute, I told Ms. Janet Schmidt,
20 Commissioner Janet Schmidt, that it was in her
21 single member district and not in Gus Ventura's.
22 We don't know where the material went to, but it
23 didn't come to the chair, me, for me to inform Ms.
24 Janet Schmidt. Therefore, she didn't have the
25 opportunity to inform Peabody School or anyone in
26 that single member district.

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1 MS. KING: But you were aware of that
2 the night of July 7th when you voted, correct?

3 MR. PERNELL: Yes.

4 MS. KING: And you both voted for this
5 resolution?

6 MS. SCHMIDT: No, we did not. We voted
7 to follow the decision of Stanton Park Neighborhood
8 Association.

9 MS. KING: The 6A Commission voted to
10 support Mr. J. Andrew Scallan development without
11 reservation. There is no reference here in the
12 document that I have to the Stanton Park Civic
13 Association. Madam Chair, I move that we do not
14 postpone. We can go forward tonight.

15 CHAIRPERSON REID: Just a moment. Let's
16 allow this gentleman in here because he is trying to
17 say something.

18 MR. SCALLAN: I would only say that I
19 had received --

20 CHAIRPERSON REID: Your name and your
21 address.

22 MR. SCALLAN: Andrew Scallan. I am the
23 applicant. I had talked to someone from the PTA
24 weeks before this. They knew the position of
25 Stanton Park. They had -- there was someone at that
26 meeting -- at your meeting that was from the PTA and

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1 understood their position -- you know, understood --
2 Jan, you were there and said they understood that
3 they had some reservations. They are here to tell
4 you what the reservations are. I mean, I just --

5 MS. KING: We can impose a condition.

6 CHAIRPERSON REID: Thank you. This is
7 the last one.

8 MS. LORD: Hi, my name is Victoria Lord.
9 I am --

10 MS. KING: I can't hear a word you are
11 saying.

12 MS. LORD: I am sorry. My name is
13 Victoria Lord and I am Vice President of the PTA for
14 the Peabody School. I am the person from the PTA
15 who has been handling this matter. Mr. Scallan has,
16 indeed, been in touch with people, but they are not
17 official representatives of the PTA. We did not
18 have a representative at this ANC meeting because we
19 were not informed that this issue would be presented
20 to the ANC that evening. So we had no opportunity to
21 gather any of our membership to attend that meeting
22 and to make our views known at that meeting. It is
23 also our understanding that this meeting was a
24 rather disorganized meeting and Mr. Scallan made his
25 presentation on the street.

26 MR. PERNELL: I beg your pardon on that,

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1 Madam Chair. This was an organized meeting and it
2 has been for the last three or four years. And I
3 beg your pardon on that.

4 MS. SCHMIDT: Madam Chairperson, if I
5 can make an additional point.

6 CHAIRPERSON REID: Okay. The last
7 comment and then we have to take a vote.

8 MS. SCHMIDT: I first would like to
9 explain the background which stated without
10 reservation. We stated without reservation because
11 discussions of Stanton Park Neighborhood
12 Association, which were done in the absence of Mr.
13 Scallan, was that it was the neighborhood
14 association's hope that if they backed it without
15 reservation that in fact a swap of property would
16 take place where the school board would substitute
17 this property for other property for Mr. Scallan to
18 develop. And that is why the statement without
19 reservation is included. And with respect to Ms.
20 Lord's comments that the meeting was disorganized, I
21 will tell you that the meeting was continued outside
22 the J.O. Wilson School on the street because we were
23 asked to leave the school as they were closing.

24 CHAIRPERSON REID: Thank you. Thank you
25 very much. All right, now --

26 MR. HOOD: Madam Chair, I would just

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1 like to add that I very much so disagree with Mr.
2 Brown. I believe that just like applicants have a
3 chance to change their mind when they come down to
4 this Board, so do ANCs and other community groups.
5 But I would like to see us at least keep the record
6 open so that the ANC can go back and work out the
7 issues of the Peabody School. Because I too had
8 that as a concern before we even got into the case.
9 So if we can keep the record open, then I will be
10 willing to go forward.

11 CHAIRPERSON REID: All right. Then I
12 think that the Board -- Ms. King has already put a
13 motion to go forward today and Mr. Hood is
14 seconding?

15 MR. HOOD: I don't know if I want to
16 second it, but I will second it.

17 MS. KING: Go forward with it today
18 provided that we would not make a --

19 MR. HOOD: Provided we keep the record
20 open.

21 MS. KING: It cannot be a bench decision
22 and we will make our decision at a subsequent
23 meeting by which time the -- you know, we will give
24 ample opportunity. We will keep the record open
25 until -- I don't know -- 10 days or whatever the
26 usual thing is. Two weeks or whatever.

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1 MR. HOOD: Commissioner King, especially
2 to give the Peabody School and the ANC a chance to
3 express and resolve some of their concerns.

4 MS. KING: And we also always encourage
5 the developers and the community to make some kind
6 of an accommodation so that everybody gets something
7 that they want or ends up reasonably happy. But,
8 you know, to postpone this means that we won't be
9 hearing it until sometime in late October, and I
10 think that is unnecessary delay.

11 CHAIRPERSON REID: And we want this to
12 be done correctly. So, if in fact the ANC has
13 reversed their position, then they need to go ahead
14 and have a meeting and have a vote with a quorum
15 that are present and then submit that to us. That
16 would then basically replace or reverse the decision
17 that we have before us, and that is the only thing
18 we can go by right now. All right.

19 Now that having been done, Mr. Brown.

20 MR. BROWN: Madam Chair, members of the
21 Board, my name is Patrick Brown from Greenstein,
22 DeLorme and Luchs. With me and to my left is my co-
23 counsel, Gene Rested, also from the firm.

24 To my right is Mr. Andrew Scallan, the
25 applicant. And next to him Professor Dorn McGrath
26 who will be testifying on behalf of this

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1 application.

2 It's an application to permit the
3 construction of a 3 story building with a cellar in
4 the C-2-A CAP overlay district. In order to
5 accomplish this three variances are required;
6 variances from the 2.5 maximum on FAR, a variance
7 from how that FAR is allocated. And then also a
8 parking variance.

9 Now, this sounds like a full plate.
10 This type of case, and in fact in the types of
11 variances the Board has dealt with previously right
12 down the street at 5th Street. And this case, as
13 the testimony will present, the practical
14 difficulties that justify the variances are, if not
15 the same, more compelling based on the specific
16 limitations of this property; the limitations
17 imposed by the governmental authorities and also a
18 significant realization and shift as it relates to
19 Ward 6, the Capitol Hill overlay district and the
20 comprehensive plan having to do with those areas
21 which clearly point in support of this application.

22 I would particularly like to reference,
23 and it's been presented to the Board, there's a BZA
24 case for 518 and 520 C Street, N.E., which is
25 substantially on all floors involving variances from
26 the various restrictions both inherent in the CAP

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1 overlay district as well as in general for FAR and
2 parking, which goes through a similar site. And I
3 recommend that reading to the Board because I think
4 it's well a thought out decision by the Board.

5 With that, I'd like to introduce Mr.
6 Scallan, who is here on behalf of the applicant, the
7 403 C Street Limited Liability Corporation, and ask
8 him to present his testimony. Written copies of
9 that have also been presented to the Board members.

10 MR. SCALLAN: My name is Andrew Scallan.
11 I live at 3018 44th Place, Washington, D.C. I'm a
12 member of the 403 C Street, L.L.C., the applicant in
13 this case.

14 Before you today is a request to build a
15 small office building on vacant land near the
16 southeast corner of 4th and C Streets, Northeast.
17 The lot overlooks Stanton Park and there's a small
18 six foot wide alley that extends to 4th Street at
19 the rear of the lot.

20 Our request is to build a 3 story plus
21 cellar office building on the site. The variances
22 sought are for allowable FAR of 2.5 non-residential
23 and for lack of parking.

24 Previous to this date the Historic
25 Preservation Review Board reviewed our plans and
26 approved on a conceptual basis the building before

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1 you that is the subject of this application. In
2 summary, this building is 25 feet wide, 83 feet deep
3 and 40 feet tall to the ceiling of the top floor.
4 At the same time, in spite of our requests for a
5 curb cut at one of several locations, HPRB did not
6 approve a curb cut and, thus, denied us even minimal
7 parking.

8 The allowable density in the CAP overlay
9 C-2-A District is 1.8 FAR. Outside the CAP overlay
10 district in the C-2-A zone the allowable density is
11 2.5.

12 We have also asked to use it for
13 residential purposes. We do not believe this modest
14 increase in FAR will have an adverse effect on the
15 neighborhood, the Capitol Hill interest district,
16 nor the integrity of the zoning regulations or map.

17 This small, narrow 2500 square foot site
18 represents a number of practical difficulties in
19 light of current building code requirements for
20 egress in Americans With Disability Act, ADA,
21 regulations. Larger rest rooms, an elevator shaft
22 and wide stairways take up a large proportion of the
23 available area for each floor. The relative
24 percentage of the area needed for core requirements
25 in this case is significantly larger than competing
26 buildings with larger floor plates.

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1 In addition, the cost of these items,
2 including a budgeted \$45,000 for an elevator and
3 \$15,000 for an exterior stairs, is disproportionate
4 to the total cost of the project. For instance, the
5 \$10,000 fee for a 4 inch water connection needed for
6 a sprinkler system is divided by a much smaller area
7 than competing buildings with greater land area.

8 In summary, these governmental
9 regulations impose substantial practical
10 difficulties in development of this site. These
11 difficulties are not new. The last building built
12 on Stanton Park is located at 518 C Street, almost
13 across the street from this one, catty-corner across
14 the park, and was constructed as a result of BZA
15 decision 14573 in 1987. A 2.5 FAR plus .44 interior
16 garage was approved on a 4,025 square foot lot --
17 which is about 1500 square feet larger than mine.
18 The case reads, and this is the decision, "Any new
19 construction on the site must comply with the
20 requirements of BOCA code, fire code, handicap code
21 and Historic District guidelines. It is not
22 economically feasible or physically desirable to
23 comply with these code requirements on a site as
24 small as this one." Obviously, our site is even
25 smaller and, thus, magnifies the resulting practical
26 difficulties.

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1 Secondly, denying of any parking is also
2 a significant practical difficulty. While
3 experience has shown that the vast majority of
4 office workers in this neighborhood use public
5 transportation, particularly the nearby Union State
6 Metro Station, public parking or walk to work, some
7 on site parking is highly desirable. Parking is
8 restricted in front of the site because of the
9 adjacent school and parking in the surrounding
10 residential neighborhoods is restricted to
11 residents. The effect is to deny a commercial owner
12 any nearby parking since they cannot park on their
13 property and they cannot park on the street. In
14 contrast, an existing building would likely be
15 eligible for a waiver of all parking loading
16 requirements based upon its contribution to the
17 character of the historic neighborhood.

18 This building is in compliance with the
19 changes of the zoning regulations recommended by the
20 recent comprehensive plan amendments. These
21 recommendations create an overlay in Ward Six for
22 Historic Capitol Hill neighborhood and the A Street
23 commercial corridor. Now the FAR of 3.0 is
24 recommended for C-2-A and 2.5 for the Capitol
25 interest district. No change in building is
26 recommended. A distinguished planner instrumental

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1 in drafting those changes, Dorn McGrath, will
2 testify as to difficulties in small lot development.

3 We have presented our case to three
4 community organizations. The Stanton Park
5 Neighborhood Association voted to support this
6 application. The ANC-6A voted to support this
7 application without reservation. The Capitol Hill
8 Restoration Society voted to support one variance,
9 took no position on one and opposed one variance
10 even though they initiated and support the proposed
11 comprehensive plan overlay.

12 We think it is also noteworthy that they
13 did not oppose in a similar variance for 518 C
14 Street in 1987. Significantly CHRS recognized the
15 site limitation and encouraged zoning relief at the
16 Zoning Commission level.

17 We have been sensitive to the issues
18 raised by the Peabody PTA. Our partnership and the
19 landowner before us have allowed the PTA to use the
20 land for a garden project for some 20 years. We are
21 willing to stipulate that the windows facing the
22 school yard be constructed in nonbreakable materials
23 and we'll work closely with the school to prevent
24 any hazards to the children during the construction.
25 We will not allow any trespassing by construction
26 vehicles during construction. We also note the

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1 typical office worker in our building will arrive
2 after normal school start hours and will depart well
3 after school is dismissed.

4 In conclusion, this small site
5 development clearly contains practical difficulties,
6 and that is that the development not only would have
7 no inverse impact on the neighborhood, but indeed,
8 it is in conformance with planned use
9 recommendations currently under consideration.

10 Thank you very much.

11 CHAIRPERSON REID: Questions?

12 MS. KING: Not yet.

13 CHAIRPERSON REID: Mr. McGrath -- is
14 Dorn going to go next?

15 MR. BROWN: Yes. Before he gives his
16 testimony, request the Board recognize him as an
17 expert witness, not only with respect to urban
18 planning and land use matters for which you will
19 recognize, but even going even further than that to
20 the specifics not only of the Capitol Hill area and
21 Ward Six where he's been intimately involved in
22 planning issues there, but also to this type of
23 small lot development in that type of context on
24 Capitol Hill. I think his knowledge and background
25 generally as well as specifically in this area is
26 worthy of note and important to examining this case,

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1 and I would ask he be recognized in that regard.

2 CHAIRPERSON REID: Has he been
3 recognized as an expert witness here before?

4 MR. BROWN: We have submitted his CV and
5 a list of where he has been expert, including this
6 Board as well as many others and courts in this area
7 and throughout -- I guess throughout the country.

8 CHAIRPERSON REID: You submitted a CV?

9 MR. BROWN: Yes.

10 MS. KING: We received it today.

11 CHAIRPERSON REID: Oh, I haven't seen
12 it.

13 MR. BROWN: And on top is a one page
14 list that kind of summarizes his expert testimony.

15 MS. KING: Page 10 of his CV is the
16 original --

17 MR. BROWN: Well, actually, it should be
18 a separate page, which --

19 MS. KING: It is, but I mean it
20 constitutes a tenth page.

21 MR. BROWN: Yes. Yes.

22 CHAIRPERSON REID: Okay. I have no
23 problem with him being accepted as an expert
24 witness.

25 MS. KING: No, I think he's well known
26 as a land use planner.

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1 CHAIRPERSON REID: Okay.

2 MR. BROWN: Thank you very much.

3 PROFESSOR McGRATH: Good afternoon,
4 madam Chairman and members of the Board. I'm Dorn
5 McGrath, Jr.

6 I am a resident of the District of
7 Columbia. I live at 2710 Brandywine Street,
8 Northwest. And I'm here to testify today on behalf
9 of the applicant, 403 C Street, Northeast, L.L.C.

10 I'm employed in the District as a
11 professor of urban and regional planning at the
12 George Washington University, and I serve there also
13 as chairman of the Department of Geography and
14 Director of the Institute for Urban Development
15 Research.

16 As Director of that institute I oversaw
17 the preparation of a ward plan for Ward Six some
18 years ago carried out under my direction and my
19 associate by graduate students in urban and regional
20 planning in collaboration with many citizen groups
21 and businesses, all of whom provided substantial
22 financial assistance for the project, and I might
23 say entirely for the students.

24 Now, this project was completed in 1988,
25 after more than two dozen meetings with the
26 community groups. And the City Council approved and

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1 adopted the Ward Six plan in 1989. And I admit that
2 I live in Ward Three, but I've become quite familiar
3 with characteristics and many details of Ward Six as
4 a result of my continuing experience with
5 development trends and issues in the Ward for 20 odd
6 years.

7 Our city has to live with the awkward
8 legacy of a zoning ordinance that first was prepared
9 in 1958, which has added to all of our tribulations,
10 yours particularly. Local zoning regulations have
11 been amended countless times since then to
12 accommodate the needs of rapidly changing building
13 and environmental technologies.

14 Our analyses of the framework of zoning
15 regulations in the mid 1980's revealed widespread
16 handicaps to otherwise desired types of development
17 on Capitol Hill and elsewhere in the Ward. The
18 local zoning regulations imposed artificial, quite
19 obsolete
20 unrealistic requirements on many historic properties
21 preventing their use and maintenance in keeping with
22 evolved technology and commercial standards.

23 Another factor that emerged in the
24 1980's was the federal requirement to modify
25 buildings to make them easily accessible to persons
26 with disabilities. This was the Americans with

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1 Disabilities Act. The federal mandated ADA
2 requirements dictated specific dimensional standards
3 for ramps, hallways, elevators and bathroom
4 facilities at buildings that old and new were
5 required to meet. I would add that my own
6 university spent many millions of dollars trying to
7 adapt old buildings to meet those standards at great
8 difficulty.

9 The standards imposed disproportionately
10 heavy penalties on older buildings and on small
11 narrow lots because there can be no compromises with
12 finite dimensions of a 25 foot wide lot and the
13 resulting flurry available when the ADA required
14 dimensions become part of the design and layout of
15 individual floors.

16 The building proposed for 403 C Street,
17 Northeast, has been designed to meet these ADA
18 requirements. And the FAR of 2.5 as recommended
19 some time ago for the C-2-A Capitol Interest
20 District is needed to enable this building to meet
21 the remainder of its basic use space use program
22 within the lawful building envelope.

23 The variance is sought to permit
24 development of Lot 825 in square 814 with this lot
25 appear to be reasonable and appropriate for the
26 property. Developing the presently empty lot as

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1 proposed for an office building keeping with the
2 scale and other architectural characteristics of the
3 Stanton Park neighborhood seems to be entirely
4 consistent with the trend of nonresidential use of
5 the southside of Stanton Park between 4th and 6th
6 Streets.

7 Nearly all of the present C Street
8 frontage of the park is in use for commercial
9 purposes, including the National Association for
10 Home Health Care in the far corner, lawyers'
11 offices, a court reporter, a notary public office,
12 Townhouse Furniture Store, a former residence now
13 for sale for commercial use. Such uses are not only
14 permitted under existing zoning, the C-2-A Capitol
15 Interest District, but they're encouraged by the
16 specific language of the most recently adopted
17 version of the Comprehensive Plan Act of 1984 which
18 was adopted in December of 1998.

19 Now, I've listed all the sections with
20 which that is in compliance which actually
21 encouraged this, but I didn't attempt to read them
22 here. But they're all as they are listed with
23 respect to the Ward Six plan in that whole chapter
24 of the original ordinance.

25 As recognized also, the D.C. Historic
26 Preservation Review Board has approved the proposed

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1 design for the building to occupy the now vacant
2 premises except for any curb cut. Accordingly, in
3 my opinion, the proposed office building for this
4 site would be consistent with the character of the
5 neighborhood and its logical development and that
6 its performance characteristics would compliment
7 other functions performed by commercial uses and
8 public facilities in the immediate vicinity of the
9 Capitol Hill Historic District.

10 Thank you. I'll be glad to answer
11 questions if there be need.

12 MS. KING: I have questions.

13 CHAIRPERSON REID: Okay. Ms. King,
14 begin.

15 MS. KING: The red building is the
16 addition and the gray and white building are the
17 existing structures?

18 MR. SCALLAN: No, the red building is
19 the new structure. The white building is the
20 adjacent property.

21 MS. KING: It's the adjacent property

22 MR. SCALLAN: Yes, ma'am.

23 MS. KING: Oh? Well, now there's an
24 existing building?

25 MR. SCALLAN: No, ma'am. This is a
26 vacant lot.

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1 MS. KING: Oh, I see. The existing
2 building doesn't belong -- I mean where it says
3 here "existing building," that doesn't belong to
4 you?

5 MR. SCALLAN: Yes. It probably should
6 say adjacent property owner.

7 MS. KING: Yes. I mean, I thought well
8 they're adding on, but no.

9 MR. SCALLAN: No.

10 MS. KING: All that you're involved in
11 is this piece of property, the one that's outlined
12 in red on here?

13 MR. SCALLAN: Yes, ma'am.

14 MS. KING: Okay.

15 Now, if you had been given a curb cut,
16 where were you going to put your parking?

17 MR. SCALLAN: Well, I first asked to --
18 I designed a building that would have a garage in
19 the front.

20 MS. KING: I see. Okay.

21 MR. SCALLAN: And then I was told by the
22 neighborhood associations that was not desirable and
23 they suggested maybe on 4th Street there is --

24 MS. KING: Yes, the Historic
25 Preservation Review Board is very tough about curb
26 cuts.

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1 MR. SCALLAN: Right. There is a six
2 foot alley on 4th Street and I asked for conceptual
3 approval if I could work a deal with the adjacent
4 property owner to get an easement, that we could at
5 least park something in the back. That was also
6 denied.

7 MS. KING: Okay. All right. It's
8 clear.

9 And the school playground, do we have a
10 photograph in the file that shows a view looking
11 across your property to the school playground?

12 MR. SCALLAN: Yes, you should. You
13 should have something in the file that shows both
14 the property and the school.

15 MS. KING: And how wide is that
16 playground?

17 MR. SCALLAN: That playground in the
18 front there, I'm going to say is 150 feet wide.
19 There's probably 150 feet, I would think. Maybe 100
20 to 150 feet between our lot and the Peabody
21 structure itself.

22 MS. KING: Okay. Great.

23 No further questions at this time.

24 CHAIRPERSON REID: Mr. Hood.

25 MR. HOOD: Mr. Scallan, have there been
26 any discussions, your proposed use is office --

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1 MR. SCALLAN: Yes.

2 MR. HOOD: Have you had any discussions
3 on what type of tenants you're going to attract or
4 what you're going to do?

5 MR. SCALLAN: Well, I think that your
6 type of tenant that you'll attract or owner, it very
7 well could be a build-to-suit building, would be a
8 nonprofit type office user, probably. That's the
9 typical small association representing someone in
10 Washington.

11 MR. HOOD: Has anyone had any contact if
12 this is approved to be able to go into the facility?
13 Do you have anybody at the moment?

14 MR. SCALLAN: No, I do not have a
15 purchaser in hand or a user.

16 MR. HOOD: No further questions.

17 CHAIRPERSON REID: All right. Is she
18 going to testify?

19 MR. BROWN: No, she's my co-counsel.

20 CHAIRPERSON REID: I forgot. You said
21 that. I'm sorry.

22 MR. BROWN: In case I get struck by
23 lightning.

24 CHAIRPERSON REID: Okay. We have no
25 further questions at this time.

26 Can we have questions and closing

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1 remarks.

2 MR. BROWN: Reserve closing remarks.

3 CHAIRPERSON REID: Let me see if there's
4 any cross examination before you leave.

5 The ANC -- did you have any questions?

6 MS. SCHMIDT: May I ask a question so --
7 spoke here today?

8 CHAIRPERSON REID: All right. Single
9 member district representative?

10 MS. SCHMIDT: Okay. Excuse me. Could
11 you tell me your name over again, please? I didn't
12 hear you.

13 PROFESSOR McGRATH: McGrath.

14 MS. SCHMIDT: McGrath.

15 CHAIRPERSON REID: Who do you want to
16 ask questions of?

17 MS. SCHMIDT: I wanted to ask Mr.
18 McGrath a couple of questions.

19 CHAIRPERSON REID: Mr. McGrath, please
20 come back up. I'm sorry.

21 PROFESSOR McGRATH: Yes.

22 MS. SCHMIDT: Mr. McGrath, could you
23 tell me to what extent or percentage wise the ADA
24 requirements which was enacted in 1992 would require
25 the building to be enlarged?

26 MS. KING: You know, I can't hear you or

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1 see you. Why don't we move this now that we've
2 dealt with, and why don't you stand near one of the
3 microphones so that the recorder can hear you. And
4 will you speak up so we can all hear you?

5 MS. SCHMIDT: First of all, let me ask
6 you, are you paid for your testimony here today?

7 PROFESSOR McGRATH: Yes.

8 MS. SCHMIDT: What is your fee?

9 PROFESSOR McGRATH: My fee?

10 MS. SCHMIDT: Yes.

11 MR. BROWN: I object to that.

12 PROFESSOR McGRATH: I don't know that I
13 have --

14 CHAIRPERSON REID: Sustained.

15 MR. BROWN: I mean he's --

16 MS. KING: Sustained.

17 CHAIRPERSON REID: Sustained.

18 MS. SCHMIDT: It is correct you are paid
19 for your testimony?

20 PROFESSOR McGRATH: I am.

21 MS. SCHMIDT: Are you an expert witness
22 in these type of cases?

23 PROFESSOR McGRATH: Yes.

24 MS. SCHMIDT: All right. Now you stated
25 that the ADA which was passed in the 1980's, but it
26 was in fact passed in 1992, effected the size --

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1 MS. KING: Would you share your remarks
2 with the Board?

3 MS. SCHMIDT: Yes.

4 MS. KING: Okay. You've got to speak up.

5 CHAIRPERSON REID: We can't hear.

6 MS. KING: And this segment is for to be
7 given the opportunity to ask questions and you can't
8 testify. You cannot testify.

9 MS. SCHMIDT: All right.

10 MS. KING: Pose whatever you want to say
11 in the form of a question.

12 MS. SCHMIDT: Could you please -- excuse
13 me. Could you please respond and tell me to what
14 extent the regulations enacted under the ADA would
15 require Mr. Scallan to increase the size of the
16 property?

17 PROFESSOR McGRATH: Well, they do not
18 require him to increase the size of the property.
19 The property is finite in its dimensions. What the
20 requirements do is impose a larger spacial
21 requirement on the floor plate of the building
22 because you simply can't make an elevator of a given
23 size smaller, you have to insert it into whatever
24 the space of the floor plate is.

25 MS. SCHMIDT: Well, what percentage
26 would it increase the floor plate of the --

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1 PROFESSOR McGRATH: It depends entirely
2 on the design. There's no fixed percentage. That's
3 not a good question.

4 MS. SCHMIDT: Well, you had stated that
5 FAR was needed for that reason, so I'm asking you --

6 PROFESSOR McGRATH: No, I did not. I
7 stated that the FAR is needed for all such buildings
8 on Capitol Hill because the way they were originally
9 built, the design, they're quite narrow and long and
10 there was a notion that at one time they would have
11 to have a residential component above an office or a
12 retail use. And that frustrated development of
13 properties all over Capitol Hill for many, many
14 years and, thus, changes were adopted in the earlier
15 Comprehensive Plan and recommended a 2.5 FAR for a
16 location such as this for both old buildings and
17 new.

18 MS. SCHMIDT: So you opine as to whether
19 or not -- how much you would need in excess of 2.5
20 to comply with ADA?

21 PROFESSOR McGRATH: You don't need
22 anything in excess of 2.5. All you need is 2.5

23 MS. SCHMIDT: So he could build a
24 building and comply with ADA without having a
25 variance for the -- in coverage of the building on
26 the property?

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1 PROFESSOR McGRATH: No, no. Probably
2 not. I mean, he designed the building, it is
3 building and he designed it this way accommodating
4 all the ADA requirements on that site.

5 MS. SCHMIDT: Could a smaller building
6 be built on that property and accommodate ADA but it
7 would only be less financially advantageous to the
8 owner?

9 PROFESSOR McGRATH: I could not say. I
10 did not design the building.

11 MS. SCHMIDT: You said that you felt
12 that this would not negatively impact the
13 neighboring area. Have you taken into account the
14 school and talked to members of the school when you
15 reached that conclusion?

16 PROFESSOR McGRATH: No.

17 MS. SCHMIDT: You also said that it
18 would not impact the neighboring premises. Could
19 you tell me how it will not impact or have you
20 looked at what the use of the neighboring commercial
21 property was when you reached that conclusion?

22 PROFESSOR McGRATH: Well, to answer your
23 questions in reverse, yes, I have walked the entire
24 frontage of C Street between 4th and 6th. and looked
25 down each street and walked each street and
26 inspected the properties. And in all likelihood a

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1 new building on that site would enhance rather
2 adversely effect any properties.

3 The building on the corner presently in
4 ambiguous use is not a marvelous building. This
5 building is designed much more carefully, the
6 proposed building, and would probably enhance the
7 value of that one as well as some others in the
8 area.

9 MS. SCHMIDT: I'm not speaking to value,
10 but could you talk about how it would enhance the
11 neighborhood? Not with respect to value of the
12 commercial premises.

13 PROFESSOR McGRATH: Well, the
14 neighborhood, I believe, would be enhanced by the
15 introduction of more people using the neighborhood
16 facilities; the streets, the parks and would provide
17 opportunities for employment and all the things that
18 go with employment in the neighborhood. And a
19 rather small number of people it probably would be.

20 MS. SCHMIDT: How would that impact
21 children going to and from the school and the
22 shuttle buses? Have you looked at that issue and
23 what's your conclusion?

24 PROFESSOR McGRATH: Well, I realize that
25 the hours of operations of a normal building on the
26 site are rather different from the hours of

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1 operation of the school. And so the people would be
2 leaving this site usually after school hours,
3 probably 2 or 3 hours later. And the same would be
4 the case in the morning, particularly if the people
5 come as is expected by mass transit.

6 MS. SCHMIDT: Do you know what the --

7 CHAIRPERSON REID: How many questions do
8 you have?

9 MS. SCHMIDT: Just one more.

10 Do you know what the tenant will be in
11 the building and what kind of traffic they will
12 bring to bear on the neighborhood?

13 PROFESSOR McGRATH: Well, I do not know
14 the tenants. As I think Mr. Scallan testified, he
15 does not have a tenant in mind right now. But quite
16 typically judging from the character of the many
17 occupancies along that frontage and in the immediate
18 vicinity, it would be likely to be clerical
19 employees and executive employees of some
20 association or some office retail group that would
21 occupy the building. It would not involve
22 manufacturing; it could not. It would not involve
23 heavy industry, it could not. It would not involve
24 heavy delivery vehicles. It seems it would be a
25 rather light on the ground use.

26 MS. SCHMIDT: Just one more question.

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1 Are you aware when you arrived at that conclusion it
2 wouldn't impact the school and the children coming
3 and going that they have a shuttle bus to another
4 satellite facility that comes back and forth during
5 the day?

6 PROFESSOR McGRATH: Yes, I'm familiar
7 with that.

8 MS. SCHMIDT: And you took that into
9 account in reaching the conclusion that there
10 wouldn't be negative impact?

11 PROFESSOR McGRATH: Of course.

12 MS. SCHMIDT: Thank you very much.

13 CHAIRPERSON REID: Mr. Pernell, did you
14 have any questions?

15 MR. PERNELL: Not for cross examining,
16 no.

17 CHAIRPERSON REID: Okay. All right.
18 Mr. Hood?

19 MR. HOOD: Mr. Brown, I just have a
20 quick question for you.

21 MR. BROWN: Sure, if I can.

22 MR. HOOD: Are you aware of the Stanton
23 Park Neighborhood Association letter July 10 of
24 1999?

25 MR. BROWN: Yes.

26 MR. HOOD: Could you briefly just tell

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1 me what some of the concerns were of the Peabody
2 School and have you been working with them, and have
3 you addressed any of them?

4 MR. BROWN: Can I ask Mr. Scallan to
5 answer that.

6 MR. HOOD: Okay.

7 MR. BROWN: I think it's better. There
8 are a lot of questions that I think it's best for
9 him to answer.

10 MR. HOOD: Just briefly, if you could
11 just describe for me some of the concerns of the
12 Peabody School, and I would like to get it from you
13 before they come up.

14 MR. SCALLAN: Well, the first concern is
15 that they -- specific concerns are, the first
16 concern that I heard mentioned was that they were
17 concerned about the windows on the side of the
18 building. And I have said that we will create those
19 -- make those windows out of unbreakable material.

20 I was told that the Peabody School was
21 concerned about if there was any construction, this
22 building or anything, that the children could get
23 hurt and fall into a site. And my point is that we
24 will make every effort to make sure -- I'm not more
25 interested in that than anybody is, you know, that
26 we do this in a safe and sound fashion.

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1 I'm told that people are concerned about
2 parking, but I've been denied parking. I mean, I
3 can't do anything about parking.

4 You know, those are the concerns that I
5 know of.

6 Now, I will say that it was brought up,
7 you know, I have been asked if I would swap this
8 property for something else. I have allowed and the
9 previous land owner has allowed, Peabody School PTA
10 to use this property for years. When I bought the
11 property 3 years ago, the PTA president called me up
12 and asked if they could use it, and I allowed them
13 to use it for that purposes. I've paid insurance on
14 it in the meantime, didn't ask them to do that. I
15 mean, I have maintained the property and kept a
16 gardening contract on the property in that time.

17 I understand the PTA would like this to
18 be part of school property, and I have said that I
19 am amenable to discussion along those lines. But,
20 you know, the point is that I have to -- you know, I
21 have my lot and I want to be able to go ahead and
22 plan to build a building there. And I did not feel
23 that mixing those 2 together was appropriate.

24 I will say that no one from the PTA,
25 other than the call to use the property, has
26 directly called me regarding any of these issues.

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1 MR. HOOD: Okay. Thank you.

2 CHAIRPERSON REID: Thank you very much.

3 We now go to government reports. Was
4 there a report from the Historic Preservation Review
5 Board? Yes.

6 MR. BROWN: There was a staff report
7 attached as an exhibit to the applicant's pre-
8 hearing statement.

9 CHAIRPERSON REID: I'm sorry, Mr. Brown,
10 what are you saying? What did you just say? I
11 didn't hear you.

12 MR. BROWN: Historic Preservation Review
13 Board was attached also an exhibit to our pre-
14 hearing statement.

15 CHAIRPERSON REID: And basically in a
16 letter dated May 27th the HPRB recommended approval
17 of the project and concept, but denied the curb cut.
18 That's the gist of it.

19 MR. BROWN: That's exactly it.

20 CHAIRPERSON REID: Okay. Mr. Pernell.

21 MR. PERNELL: Good morning Board members
22 and members of the audience. My name is Daniel M.
23 Pernell, III. I am Chairman of the 6A Commission.

24 My realm of training is 14 commissioners
25 and we're responsible for 28,000 constituents on
26 Capitol Hill.

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1 Members of the Board, I would like to
2 say that 6A Commission stands up and on its record
3 of serving the public.

4 The 6A Commission has spent so far more
5 than 41 hours and about 14 days of their personal
6 time in dealing with BZA and PUD applications in our
7 community.

8 The 6A Commission has been confronted
9 with numerous responsibility and personal issues in
10 the community, and we have tried our best to adhere
11 to those concerns.

12 I would like to say that the ANC
13 Commission has not met all of its responsibility in
14 the community, but we're trying. And most of its
15 responsibility is listening to our constituents in
16 the area. There are institutions and there are
17 business and schools in the area that do not come to
18 our 6A Commission meetings. We are posted by law
19 every first Monday -- I mean every first Thursday of
20 the month for these people to attend. We are on the
21 Internet. We're on Channel 24, 25, 26, 16, 13 as
22 far as our meetings in the community. We have
23 changed a couple of times from the Midlin Hospital
24 to GO Wilson presently.

25 What I'm trying to say here today is
26 that this application here today came before us on

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1 July the 7th, and what we heard at that meeting is
2 the best of knowledge that we know about this
3 concern. But when we have additional concerns
4 coming from constituents in the area, such as
5 Peabody School, we have the right to change our
6 vote. And changing our votes to not to please our
7 constituents but to satisfy them in what they want
8 in their community, what they want in their school.
9 We have the right, the community, the 6A to
10 scrutinize the business in our community. And
11 that's what we're here for.

12 Madam Chair, I'm going to turn it over
13 to the single member district Commissioner Janet
14 Schmidt. She is one of our newest commissioner.
15 She's trying to do her homework in answering the
16 concerns in our community. We have these meetings.
17 We try to do the best we can as commissioners. I
18 just want the public remind -- to remind them of
19 that. We're volunteer, we're doing the best --
20 we're not the best of knowledge in doing these PUD,
21 but we do the best we can.

22 If there's a concern that comes to me,
23 which did come to me today, as Chairperson I have
24 spoken and concur with Commissioner Janet Schmidt
25 that there's some changes that should be made, and
26 she tried her best to do so. It didn't work in our

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1 favor or in the favor of the opposition group. But
2 nevertheless, we're faced here with the Board today
3 to give as much of the facts and information we just
4 received.

5 And now I'll turn it over to Ms. Janet
6 Schmidt.

7 CHAIRPERSON REID: Thank you.

8 MS. SCHMIDT: I would like to thank the
9 Board for allowing a continuation with respect to
10 bringing forward additional facts after speaking to
11 concerned members of the school and the community
12 with respect to safety issues of the children and
13 parking.

14 We will return to the Board a letter
15 indicating what resulted after the ANC-6A reconvenes
16 and meets with members of the community that have
17 come forth today.

18 CHAIRPERSON REID: I'm sorry, Ms.
19 Schmidt, I can't hear you.

20 MS. KING: I can't hear you. I can see
21 your mouth moving, so I know you're speaking. I
22 mean, you started out okay and then your voice went
23 down.

24 MS. SCHMIDT: All right.

25 CHAIRPERSON REID: Remember also that
26 the people in the back of the room also would like

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1 to hear.

2 MS. SCHMIDT: I'd like to at this time,
3 again, thank the Board for allowing for a
4 continuation so we can hear from parents of students
5 of the Peabody School, the PTA association and other
6 concerned bodies--

7 CHAIRPERSON REID: Excuse me. We didn't
8 allow a continuation.

9 MS. SCHMIDT: I think -- excuse me. I
10 thought that you were going to keep -- excuse me.

11 CHAIRPERSON REID: It's open.

12 MS. SCHMIDT: Excuse me.

13 CHAIRPERSON REID: That's different.

14 MS. SCHMIDT: And within the 10 day
15 period we will get to you a letter after having the
16 opportunity to speak and meet with parents.

17 And please allow for misstatement. I'm
18 47% hearing impaired, so I do the best I can. Thank
19 you.

20 CHAIRPERSON REID: Thank you.

21 MR. PERNELL: And Madam Chair, just to
22 in the record besides the 41 hours and the 14 days
23 that the Commission has convened this year since
24 January 7th, 1999, this is not including special
25 meetings called by the Mayor in our single member
26 district or in Ward Six by Council Woman Ambrose.

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1 It's not even counting those meetings that we have
2 to attend on our personal time in that community.

3 Also, I would like to say that, again,
4 the timing of our meeting by law since 1974 is
5 posted in Channel 24, 25 and 26, 16 and 13. And I
6 have seen it myself, it's there. So, I just want to
7 end it on that note.

8 CHAIRPERSON REID: Thank you, Mr.
9 Pernell.

10 MR. HOOD: Madam Chair, may I ask a
11 question?

12 CHAIRPERSON REID: Yes.

13 MR. HOOD: Are we allowing them 10 days,
14 the ANC 10 days to respond?

15 MS. KING: No. When we come to an end
16 to decide when we're going to hearing this, then
17 we'll determine --

18 CHAIRPERSON REID: We'll determine.

19 MR. HOOD: Oh, okay. I think we already
20 determined that.

21 MS. PRUITT: Madam Chair, for the
22 record, so I can keep this straight, are we
23 accepting the ANC's position, this letter that was
24 in the record or are they --

25 CHAIRPERSON REID: We understand there
26 has been a change and they are going to submit a

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1 subsequent letter that reflects the most up to date
2 current position of the ANC.

3 MS. KING: We're going to hold the
4 record open until we --

5 MS. PRUITT: So we should then strike
6 this from the record, is that correct?

7 CHAIRPERSON REID: Not until we receive
8 something else.

9 MS. PRUITT: I guess my question comes
10 then we don't know is -- right now if the ANC is
11 giving great weight, but are you giving great weight
12 to support or not?

13 MS. KING: We're not making a decision
14 today, so we're holding the record open.

15 MS. PRUITT: Okay. Well then I would
16 suggest that in their letter that they send that
17 they ask that this -- they rescind their previous
18 letter.

19 CHAIRPERSON REID: We've indicated that
20 earlier.

21 MS. PRUITT: Okay. Thank you. Just
22 wanted to be sure.

23 CHAIRPERSON REID: Thank you.

24 MR. BROWN: Now I'm confused. The
25 letter that's now in the record, it will remain in
26 the record and --

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1 CHAIRPERSON REID: That letter will have
2 to stay until we receive something otherwise. But
3 once we receive a letter rescinding that letter and
4 giving --

5 MS. KING: Should we receive a letter
6 rescinding that letter?

7 CHAIRPERSON REID: Should we receive a
8 letter rescinding that letter -- this letter and
9 also giving us the most up to date position of the
10 ANC with a quorum and a vote, then they will be --

11 MS. KING: In a duly advertised meeting.

12 MR. BROWN: And my concern, Madam Chair,
13 is that --

14 MR. PERNELL: Madam Chair, point of
15 order. I believe the state of the District of
16 Columbia --

17 CHAIRPERSON REID: Just a moment, Mr.
18 Pernell, allow him to finish. Mr. Pernell --

19 MR. PERNELL: -- is still speaking and
20 I'm trying --

21 MS. KING: Mr. Pernell.

22 MR. PERNELL: I'm trying to get a point
23 of order. I'm --

24 MS. KING: Excuse me, sir. Mrs. Reid
25 has--

26 MR. PERNELL: Commissioner Schmidt and I

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1 are still here and we have a point. The state of
2 the District of Columbia is still sitting here
3 giving a presentation, have been not concluded.

4 CHAIRPERSON REID: Your presentation was
5 concluded --

6 MR. PERNELL: No, it's not. I have
7 another comment to make, and we have an opponent
8 sitting here with us.

9 MR. BROWN: I would like to --

10 CHAIRPERSON REID: Okay. Let's just get
11 this straight.

12 MR. PERNELL: I would like for it to be
13 broken up --

14 CHAIRPERSON REID: Okay. Mr. Pernell.

15 MR. PERNELL: Yes.

16 CHAIRPERSON REID: In the first place,
17 in all instances let's try to be considerate and
18 polite.

19 MR. PERNELL: I'm trying to. But I
20 don't want anyone talking over me and my
21 commissioner, that's all I'm trying to say.

22 CHAIRPERSON REID: All right. Number
23 one. Number two is that if I'm not mistaken, I
24 heard you say that is the end of my presentation and
25 --

26 MS. KING: Indeed you did, Madam Chair.

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1 CHAIRPERSON REID: And I then thanked
2 you, and I was under the impression that you had
3 concluded it.

4 MS. KING: In fact, that was what you
5 said.

6 CHAIRPERSON REID: And then Ms. Schmidt
7 --

8 MR. PERNELL: And that was -- it was
9 concluded after I heard this gentleman say something
10 else, and I had something to say to back that up, to
11 end the record at that. And I still want it say
12 when I'm finished hearing what you're trying to tell
13 me.

14 MS. KING: Well, why don't you say it
15 now and conclude your testimony.

16 MR. PERNELL: Okay. If I have the
17 reason that no one else will come up and say
18 anything for me to say anything to be concluded.

19 I would like to say for the record that
20 that letter that you have there presently is based
21 on what the single member district ANC, Ms. Janet
22 Schmidt wants to do and the body will concur with
23 her because she received additional information, I
24 received additional information and we want to
25 concur with her, is her wishes, not the body.

26 MR. HOOD: Let me just ask a question,

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1 Madam Chair.

2 Mrs. Smith?

3 MS. SCHMIDT: Schmidt.

4 MR. HOOD: Schmidt.

5 Obviously, I understand you're taking
6 the concerns of your constituents. Have you had a
7 single member district meeting?

8 MS. SCHMIDT: No, and I would like the
9 opportunity for that. Thank you.

10 MR. PERNELL: She got that notice. I
11 didn't tell her the day of -- until July the 7th
12 that it was in her single member district. We're
13 thinking that the information that should have been
14 forwarded to me to give to Janet Schmidt was
15 forwarded to another commissioner by mistake.

16 MR. HOOD: Right. What I understand
17 that the single member district is not getting
18 weight, it's still a process through the ANC
19 process, and I just wanted to put that on the
20 record.

21 MR. PERNELL: Yes.

22 MR. HOOD: The SMD meeting should take
23 place and then and only then should the ANC vote on
24 it as a whole. I just put that on the record.

25 No reflection on 6A, but I just wanted
26 to put that on the record.

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1 MR. PERNELL: Right. We did that
2 because Ms. -- Commissioner Schmidt had the
3 understanding that there weren't any opposition.
4 She listened to several groups in the area. She
5 attended several meetings. She didn't have the time
6 to call a single member meeting. And now that we
7 have not done that, we want to do that.

8 MS. SCHMIDT: That's correct that I did
9 not have the opportunity.

10 MR. HOOD: Mr. Pernell, are ANC
11 commissioner paid?

12 MR. PERNELL: I beg your pardon?

13 MR. HOOD: Are ANC commissioners paid?

14 MR. PERNELL: Not one cent.

15 MS. KING: Of course, they never have
16 been. Never have been.

17 CHAIRPERSON REID: Mr. Pernell?

18 MR. PERNELL: Yes.

19 CHAIRPERSON REID: Have you concluded
20 your presentation?

21 MR. PERNELL: Yes, ma'am.

22 CHAIRPERSON REID: Now, let me allow you
23 to leave the table before I ask anyone else to come
24 forward.

25 MR. PERNELL: Okay.

26 CHAIRPERSON REID: So we won't have that

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1 kind of a misunderstanding. Thank you very much.

2 Mr. Brown?

3 MR. BROWN: And I didn't want to object
4 or interrupt the ANC's testimony, but I think it's
5 important the point Mr. Hood made, is that this is
6 not the SMD working individually, this is the entire
7 commission. And the opportunity for my client, Mr.
8 Scallan, to participate in that. He participated
9 the first time and there's great concern that he be
10 able to participate. I was most distressed by one
11 particular characterization that Mr. Scallan and
12 myself reviewed as the opponents, and I don't think
13 that one is borne out by the process nor the
14 reality, and I'd like to clear that up with Mr.
15 Pernell and Ms. Schmidt, wherever you are, that Mr.
16 Scallan is not an opponent.

17 MS. SCHMIDT: I understand that.

18 MR. BROWN: Okay. And he's been to the
19 commission before and he wants to come back again
20 and discuss these issues, and that goes also for the
21 Peabody School and others. So I think that's
22 important. But also it's process, that it went
23 through the ANC process and, Mr. Hood, you have a
24 good characterization of it, that a group activity
25 and it needs to continue to be that way.

26 So that, I want to make sure that's on

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1 the record.

2 MR. HOOD: Mr. Brown, I want to make
3 sure you understood my point. I just wanted to put
4 that on the record, and I think that the people who
5 live in any particular neighborhood have the right
6 to speak and say how they should shape and mold and
7 try to see their neighborhood come. I'm saying that
8 all the time that community groups are right, but I
9 think that -- see, the applicants can go home but
10 people who live there are already at home.

11 So, I was just hoping that maybe --
12 because, I mean, ANC 6A has a unanimous vote here in
13 the record. And it's obviously there's at thin line
14 between some few small little problems. So,
15 hopefully, you can work that out before the time
16 limit that we take a vote on it.

17 MR. BROWN: I'm sorry. I think you and
18 I are in complete agreement that the community both
19 at the SMD level is the critical building block to
20 this, but also it is part of a larger community and
21 larger commission. And you and I see eye-to-eye on
22 that, so I don't think there will be any
23 difficulties.

24 Thank you.

25 CHAIRPERSON REID: All right. Now, Mr.
26 Brown, did you wish to have any cross examination of

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1 the ANC?

2 MR. BROWN: No, I do not. No, thank you.

3 CHAIRPERSON REID: All right. Then
4 persons in support of the application? Seeing none.

5 Persons in opposition to the
6 application? Please come forth.

7 MS. KING: Would you son like to come up
8 and sit with you?

9 MS. LORD: He just told me I'm bored,
10 I'm getting a big reward.

11 MS. KING: Go for it.

12 MS. LORD: He's a product of our DCPS.

13 My name is Victoria Lord, I'm the Vice
14 President of the PTA for the Peabody School. I want
15 to just explain a little bit about our school,
16 because we're a little bit complicated.

17 We are a D.C. public school, but we have
18 3 campuses to provide for our children. The Peabody
19 campus specifically provides only for pre-K and
20 kindergarten students but it also serves as a
21 collection point for our elementary school students,
22 those are our 1st through 4th graders to come and
23 take a shuttle bus from the Peabody School over to
24 the Watkins Building, which is at 12th and
25 Pennsylvania, Southeast. So it is the site of a lot
26 of coming and going early in the morning and, in

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1 fact, that is really the crux of our concern.

2 In asking for the variance Mr. Scallan
3 has claimed that there's a hardship that's been
4 imposed upon him by the denial of a curb cut and the
5 subsequent parking he expected to get out of that.

6 One of the things that has to be
7 recognized is that that curb cut would have
8 provided at most 2 parking spaces. The petition
9 before you is for a variance for 11 parking spots,
10 which is a substantially larger number than two.
11 This large number of parking variances is
12 necessitated by the oversize of the building. The
13 building is 38% larger than the lot is zoned for.
14 And as a consequence of that, it will see
15 subsequently more traffic, and the traffic is, as I
16 say, one of our biggest concerns.

17 This is an area which already sees a
18 great deal of traffic in the morning. Not just for
19 the school, but because C Street serves as a main
20 artery for people coming in from Maryland to work at
21 the Capitol and downtown areas. We already have a
22 lot of concern about the speed of the cars that come
23 in through that area. And if you increase the
24 traffic, you only increase the issue.

25 Another consideration that we would like
26 you think about is that the Senate Day Care Office

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1 Building on Mass Ave almost directly adjacent to
2 this is opening in the fall of 1999, and that
3 building also will have its own traffic issues and
4 therefore, increase the traffic in that area.

5 One of the claims also made in the
6 application is that there are adequate nearby
7 surface lots to provide parking for cars. In fact,
8 there are no public surface lots in this area.
9 There are surface lots, they are reserved and owned
10 by Medlin Hospital for the use only of their
11 employees and visitors. They are owned and reserved
12 by the Heritage Foundation for the use only of their
13 employees and visitors. And by the standard office
14 buildings for their employees and visitors. There
15 are no nearby surface lots provided for the public,
16 that means random visitors to any of these office
17 buildings.

18 The only parking available is some
19 metered parking across the park, across Stanton
20 Park, a few metered spots. Otherwise you are
21 talking about trying to have people park in the
22 neighborhood on residential streets, which as any
23 resident will tell you, is already incredibly parked
24 up. In fact, as one resident who signed our
25 petition objecting to this variance said to me, she
26 said "I hate the school, too, because you guys come

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1 in here and park." We do have shuttle buses, they
2 come in every morning and stop directly in front of
3 the school building to pick up our youngsters and to
4 drop off youngsters. Because of the extremely young
5 age of some of our students, we're concerned that an
6 increase in traffic is going to create a possible
7 problem.

8 We do have a security guard on duty.
9 Our parents are always present when our children
10 collect to wait for the bus. There's always at
11 least one, usually four or five adults there. But,
12 as you know, young children are very impulsive and
13 move quickly, and this is a serious concern for us.

14 The basic concerns that we have are
15 those two.

16 The school hours issue is also something
17 I wanted to address. Our school is feeding site,
18 some of our children come as early as 8:00 in the
19 morning for breakfast, in addition to which we have
20 after-care located at our school. Many of our
21 children stay in that after-care program until 6:00
22 or 6:30 in the evening. In other words, we will
23 have small children getting into and out of cars
24 right in front of the building during exactly those
25 hours at which you would have employees arriving or
26 departing from an adjacent office building. And

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1 again, the larger the building the more employees
2 you're talking, and that's really our objection is
3 the oversize of the building and the subsequent
4 increase in traffic.

5 In addition, Mr. McGrath talked about
6 the current use of the building on the corner
7 directly adjacent to the lot. That building he
8 doesn't seem to be aware is used as a day care
9 facility for adult handicapped. They move in and
10 out of that building at different times of the day,
11 and they do use a van and need to park directly in
12 front of that building to provide for the
13 wheelchairs to be lifted in and out of the van.
14 There's an elevator that does that. So that's also
15 a traffic issue that really substantially limits the
16 parking and even the drop off and pick up area right
17 in this area.

18 So, we would really ask that the
19 oversize variance be denied.

20 CHAIRPERSON REID: Thank you.

21 MS. SCOTT: Well, you've covered
22 everything. I was going to cover the last -- couple
23 of new things.

24 My name is Laura Scott. I am the chair
25 of the local school restructuring team for the
26 Capitol Hill Cluster School. Peabody, as Ms. Lord

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1 said, is our pre-K and kindergarten campus; that
2 means it serves children only 3 to 5 years old.
3 There are 220 children 3 to 5 years old in our
4 building everyday. They're in our building from
5 8:00 in the morning until 6:00 at least, and they're
6 there for summer programs as well.

7 There is no parking on most of C Street.

8 MS. KING: Excuse me. May I clarify
9 this?

MS. SCOTT: Yes.

10 MS. KING: You have 3 year olds who come
11 at 8:00 in the morning and stay until 6:00 at night?

12 MS. SCOTT: Yes, ma'am. Yes. It's a
13 very long day.

14 MS. KING: And this is a public school
15 facility?

16 MS. SCOTT: Yes, ma'am, it is. It's
17 public pre-K and kindergarten and it has before and
18 after care as well.

19 CHAIRPERSON REID: That would be after
20 care, before and after care?

21 MS. SCOTT: And is a feeding site as
22 well.

23 MS. KING: You have 225 students, how
24 many are there at 8:00 in the morning.

25 MS. LORD: It's almost impossible to tell
26 because the number does change. The children that

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1 come at 8:00 in the morning are two separate groups;
2 the feeding group and then we also have a safety
3 patrol which are the older students who hold -- the
4 kindergarten students who hold the door open for the
5 pre-K students so their fingers don't get mashed.
6 And they come at 8:00 in the morning as well, and
7 that's about 15 or 20.

8 MS. KING: Well, can you guess how many
9 of the 3 to 5 year old are there?

10 MS. LORD: Of the 3 to 5 year olds, I
11 would say between 20 and 30 in the morning, at 8:00
12 in the morning.

13 MS. KING: Approximately 10 percent?

14 MS. LORD: Yes.

15 MS. SCOTT: And a good deal more in the
16 afternoon.

17 MS. KING: And how many are there in the
18 evening?

19 MS. LORD: That really depends, because
20 the after care varies wildly. I would say anywhere
21 from again 20 to 30 all the way up to 50 if there
22 are special programs after school.

23 MS. KING: And that's also the 3 to 5
24 year old age range?

25 MS. LORD: Yes. Yes, it is.

26 MS. KING: Thank you.

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1 MS. SCOTT: Which was one of our primary
2 objections to a curb cut at all cutting across where
3 the little children were working.

4 Again, C Street from almost the edge of
5 that building all the way to the corner of 5th
6 Street there is already posted no parking during
7 school hours to provide for our shuttle buses and
8 drop off and pick up. And there's constant
9 encroachment on that no parking zone and requiring
10 the buses to pull up in a lane of traffic to load
11 our children. Adding an oversized building that is
12 for business use would, obviously, add to that
13 parking congestion.

14 There's also no parking right around the
15 corner on 5th Street for half a block because of the
16 school, which adds enormous parking pressures to the
17 neighborhood. This is not like the previous case on
18 Benning Road where apparently there are miles and
19 miles of available parking. This is Capitol Hill
20 and parking is a nightmare.

21 Parents dropping off their children in
22 the morning double park the entire width of -- the
23 entire length of 5th Street from C Street to
24 Constitution already.

25 MS. KING: You're permitted to block the
26 street like that?

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1 MS. LORD: It doesn't block the street
2 and we're not permitted to, and we're ticketed. A
3 lot of these parents are ticketed constantly. I
4 fortunately live 2 blocks away, so we walk. But it
5 is an extremely -- it's an area that suffers
6 extremely strong pressure in the early morning and
7 late --

8 MS. KING: A lot of the pressure is
9 coming from Peabody School?

10 MS. LORD: Yes, it is. Yes, it is. And,
11 as I say, the residents of the area, and I do reside
12 2 blocks from this area, object to it. We love our
13 school but we hate the parking.

14 MS. SCOTT: I would also call to your
15 attention the really -- the different nature of the
16 400 block of C Street as opposed to the 500 block of
17 C Street that Mr. Scallan is using for comparison.
18 Almost the entire 400 block is the school and the
19 playground. There is this little tiny bit of
20 commercial development on the corner. The
21 playground, the school is the whole block. It is
22 not a commercial block. It is not a place with a
23 lot of other businesses. This is not a -- a huge
24 office building is particularly consistent with the
25 nature of the block.

26 Further, the size of the lot is,

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1 obviously, an impediment given current regulations.
2 The lot was this size when it was purchased, the
3 regulations were in place when it was purchased.
4 It's a small lot. You can't build a great big
5 building on a small lot without having impact;
6 that's why there are zoning regulations.

7 Finally, I would note that the parking
8 variance on the posted notification for this
9 hearing, parking was not originally listed on the
10 notification. That was amended, but it was not
11 amended within the appropriate time frame. I submit
12 that because as parking is such an issue in the
13 neighborhood, you would be hearing much more from
14 neighborhood residents about parking had that been
15 properly posted.

16 CHAIRPERSON REID: Thank you. All
17 right.

18 MR. HOOD: Could I ask a question?

19 CHAIRPERSON REID: Yes.

20 MR. HOOD: To the two young ladies, and
21 forgive me for not remembering your name. But are
22 you objectionable to anything being built?

23 MS. LORD: No, of course not. This is
24 private property and Mr. Scallan's more welcome to
25 build on this lot. What we're objecting to is the
26 fact that he's designed a building that's 38%

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1 percent larger than the lot is zoned for with a
2 subsequent and, obviously, completely inevitable
3 increase in traffic to the area.

4 MS. SCOTT: And the resulting parking
5 requirement of a building that large.

6 MR. HOOD: Okay. I'm trying to think,
7 does the area have zoned parking?

8 MS. SCOTT: Yes.

9 MR. HOOD: Does it start on 4th and C?

10 MS. SCOTT: The whole neighborhood is
11 zoned parking, with the exception of where there
12 are meters.

13 MS. LORD: There are meters across the
14 street, which is --

15 MS. SCOTT: Across the park.

16 MS. LORD: Across the park, which is
17 where the businesses are located in that area.

18 MR. HOOD: And just reemphasize for me
19 how you see if this project built, how it will
20 effect traffic again in the morning?

21 MS. LORD: Well, one of the things that
22 you can't really see very well from this plot is
23 that this corner is actually -- if I might get up
24 and just stand straight a little bit.

25 MR. HOOD: Sure.

26 MS. LORD: This particular corner of the

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1 building sees the intersection of Maryland Avenue at
2 an angle. Massachusetts Avenue comes in and dumps
3 onto 4th.

4 MR. SCALLAN: You're at the wrong side.
5 You're at the wrong side.

6 MS. LORD: Am I -- sorry. Okay. Over
7 here. Okay. So then Maryland comes from here.
8 Massachusetts Avenue comes shooting up here, dumps
9 all of its traffic onto 4th Street, which
10 subsequently dumps on to C Street.

11 So, you have all of these intersecting
12 streets coming together it would carry heavy traffic
13 in the morning. Coming together and shooting down C
14 Street, which is at that point 4 lanes wide, but
15 because of an island it's all sort of trodding very
16 rapidly. And it's a continual concern for us, as I
17 say, we do have parents posted out there. And to my
18 knowledge, there's never been an accident, but if
19 you keep increasing the amount of -- increasing your
20 odds.

21 MR. HOOD: My last question, I
22 understand that he allowed you to use the land.
23 What did you use the land for?

24 MS. LORD: The land has been used for
25 gardening projects for the science school. Our
26 school is actually a special school. It's an early

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1 childhood education center. Some of our teachers
2 have an expertise in teaching very young children
3 science, and we've gardened in that area, although
4 for the last year or so we haven't. But one of the
5 projects that the children do is they plant seeds,
6 they see what comes up, they actually roast the corn
7 that they grow. They planted corn again this spring
8 in a different area of the playground and they'll be
9 roasting it in the fall at their own little
10 Thanksgiving banquet.

11 They learn physics as well as
12 environmental science there as well. They learn
13 things about how water works and how dirt moves when
14 you pour water on it, and all those wonderful
15 things. It's great.

16 MR. HOOD: Okay. Thank you.

17 CHAIRPERSON REID: All right. Now, have
18 you -- is there any cross examination of these two
19 witnesses?

20 MR. BROWN: I don't wish to cross
21 examine. I would like to invite both these two
22 individuals to get together with Mr. Scallan as soon
23 as possible. That's very much his desire. Maybe
24 bring Commissioner Schmidt involved.

25 CHAIRPERSON REID: Closing remarks by
26 the applicant? In all instances, we like to try to

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1 encourage the applicant and anyone opposing the ANC
2 to try to come to some mutual meeting of the minds,
3 some resolution of any issues. And then to
4 cooperate wherever it is that you all come to us,
5 and that of course, makes it a lot easier for us to
6 come to a decision.

7 MR. BROWN: And I think that's exactly
8 where the parties will be proceeding. I would just
9 like to make some closing remarks generically.

10 Putting aside the issues that are to be
11 discussed, I think you'll see based on the Board's
12 previous experience as well as the testimony
13 provided here that we've provided a compelling case
14 with respect to the practical difficulties that are
15 inherent in this property and its location in
16 Capitol Hill, in the Capitol Hill Historic District
17 and the Capitol Hill overlay district. And in
18 relationship to the current zoning as well as the
19 Comprehensive Plan Development that, again, focused
20 on those issues that this project can go forward in
21 a way that protects and maintains those. Leaving
22 aside, which obviously we're going to have
23 discussion with the ANC and the Peabody School
24 officials, and then be able to further supplement
25 the record. So, I'd like to leave it at that.

26 CHAIRPERSON REID: Well, let me ask you

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1 this one question, and that is with regard to the
2 curb cut part of the argument may be on the opposite
3 with that, you would not be allowed any parking by
4 virtue of the government decision of not allowing
5 the curb cut. If it, in fact, it's a historic
6 district, so there is no parking requirement, per
7 se, does that mean that they it would not allow --

8 MS. KING: It's a contributing
9 structure.

10 MR. BROWN: Yes. Can I clarify? I'd be
11 happy to. They're two separate but interrelated
12 issues.

13 CHAIRPERSON REID: Okay.

14 MR. BROWN: In a historic district or
15 with a historic landmark, you are eligible for a
16 parking and loading waiver providing that the
17 property contributes to the character of the
18 historic district. In this case because we're
19 talking about new construction, we don't have a
20 building that's contributing to the character --

21 CHAIRPERSON REID: Oh, it has to be an
22 existing building?

23 MR. BROWN: If the building were here
24 and he was adding to it and asking for the exact
25 same variance relief, parking would not be an issue
26 potentially because of the parking and loading

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1 waiver.

2 CHAIRPERSON REID: Yes.

3 MR. BROWN: On the issue of the curb
4 cut, because the Historic Preservation Review Board
5 with their jurisdiction in the historic district
6 denied permission for a curb cut, there is no
7 ability for Mr. Scallan and the project to gain
8 access to the site and the zoning regulations
9 require that you gain access from a public street.
10 So that he's landlocked. Regardless of his desire
11 to provide parking, he has no way to get from the
12 street to his property, and so he's unable to,
13 physically and legally unable to.

14 CHAIRPERSON REID: Well that's where I'm
15 difficulty comprehending the Historic Preservation
16 Review Board's support of the application. Isn't
17 that contradiction? They supported it but at the
18 same time they're not allowing access to the --

19 MR. SCALLAN: Can I clarify?

20 MR. BROWN: Sure.

21 MR. SCALLAN: They supported the bulk
22 and density of the building. They approved a
23 building that's -- and 40 feet tall.

24 CHAIRPERSON REID: Well, that's fine.

25 MR. SCALLAN: And with respect to the
26 parking, they have denied me any parking. I think

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1 that in every case on Capitol Hill in development
2 over 20, 30 years you cannot provide enough parking
3 in any of these small sites to strictly meet the
4 requirements of the zoning regulations.

5 CHAIRPERSON REID: Well, that's not my
6 questions, Mr. Scallan. My question was I don't
7 understand why the Historic Preservation Review
8 Board can support their application in regard to you
9 said the bulk and the height --

10 MR. SCALLAN: Right.

11 CHAIRPERSON REID: And not allow access
12 to the site. That confuses me. I'm not a zoning
13 specialist, but --

14 MR. BROWN: Well, they have a slightly
15 different -- they have a different mandate.

16 CHAIRPERSON REID: I'm trying to kind of
17 grapple with understanding this.

18 MS. PRUITT: Madam Chair, we actually
19 and I believe counsel, earlier this year you had a
20 case where a person was landlocked on Capitol Hill
21 and they required a variance from parking.

22 CHAIRPERSON REID: It was on
23 Pennsylvania Avenue.

24 MS. PRUITT: Correct.

25 CHAIRPERSON REID: I remember that.

26 MS. PRUITT: And HPRB refused to give

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1 them a curb cut.

2 CHAIRPERSON REID: But it seems like
3 they could -- in that instance --

4 MS. PRUITT: They couldn't go through
5 the alley either because it was a private alley, so
6 there was --

7 CHAIRPERSON REID: But all they needed
8 was to get permission from the people who had the
9 condo.

10 MS. PRUITT: No, they couldn't because
11 it was a private alley.

12 CHAIRPERSON REID: I know, but --

13 MS. PRUITT: And it was never granted,
14 so they --

15 CHAIRPERSON REID: No, it wasn't granted
16 but they did have an option. But in this instance
17 there seems not to be an option.

18 MS. PRUITT: But essentially for a
19 zoning regulation it is a landlock thing.

20 MS. KING: Well, in this case you tried
21 to get accessed through an alley and were denied it,
22 is that correct?

23 MR. SCALLAN: That's correct.

24 MS. PRUITT: The point is though is that
25 the zoning regulations can be in opposition to
26 historic preservation issues and not be incorrect.

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1 It's a very bizarre way it works, but that's it.
2 And historic preservations issues are policy issues.
3 Zoning's are regulations.

4 CHAIRPERSON REID: All right. That
5 doesn't make a lot of sense, but okay. That's just
6 the way it is.

7 MS. PRUITT: Exactly.

8 CHAIRPERSON REID: All right. Thank
9 you.

10 Mr. Brown, I think that we have agreed
11 to allow time for the PTA and ANC to submit
12 subsequent reports to us and Mr. Hart will give us a
13 time line so that we can --

14 MS. KING: Well, and I think that Mr.
15 Brown and his client have to be given time to
16 respond to anything --

17 CHAIRPERSON REID: Well, Mr. Hart got to
18 give a time line for that and then we will determine
19 what date will be set for a decision.

20 MS. PRUITT: Well, if you'd like to hear
21 this -- if you'd like to make a decision date on
22 September 8th, submissions and the letter from the
23 ANC, the placement letter, would be due on September
24 25th to responses -- I'm sorry. August 25th with
25 responses to the submission and the ANC letter by
26 September 1st.

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1 MS. KING: I have in my calendar that we
2 have a meeting on the 1st of September.

3 MS. PRUITT: September 8th.

4 CHAIRPERSON REID: She erroneously said
5 the 1st -- right exactly.

6 MS. KING: We set a special hearing for
7 the waste management on the 22nd of November because
8 we were meeting, we were told, on the 1st and the
9 15th.

10 CHAIRPERSON REID: Don't you mean
11 September?

12 MS. KING: No, I mean at our last
13 meeting 2 weeks ago we set a special meeting the
14 22nd of September to hear waste management because,
15 as Paul told us we were meeting on the first
16 Wednesday and the third Wednesday.

17 MS. PRUITT: I can't speak to that, I
18 wasn't here and unfortunately we don't have
19 transcripts that can go back to that. But the
20 September 8th date was agreed upon by the Board.

21 CHAIRPERSON REID: That's the first
22 Wednesday, the 8th?

23 MS. PRUITT: No, it's the second
24 Wednesday. A few weeks before that because it's the
25 Wednesday after Labor Day and not before Labor Day
26 and there were some issues about whether or not

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1 everybody would be back in town, and that was why it
2 was decided that it would be on the 8th on that
3 September. And public hearing notice, which went
4 out 40 days ago.

5 MS. KING: Well, I must not have been
6 here when that was --

7 CHAIRPERSON REID: The 8th is the second
8 Wednesday?

9 MS. PRUITT: Yes. The public hearing
10 notice went out 40 days ago, so it's already been
11 printed.

12 CHAIRPERSON REID: No. We should be
13 clear, we're not meeting on the first Wednesday.

14 MS. PRUITT: No, it was decided that on
15 that particular it would be the 8th.

16 MS. KING: Okay. So we're going to hear
17 waste management and our full agenda for the 22nd
18 all in one day? We set a special date of the 22nd
19 for waste management and we gave them that
20 information at the meeting two weeks ago today.

21 MR. HART: I'll have to check on that.

22 MS. KING: I can promise you, I've got
23 it written in my calendar.

24 MR. HART: I will check on it. I can
25 see where it was done that way because normally you
26 meet on the first and the third Wednesday of each

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1 month.

2 CHAIRPERSON REID: But instead we have
3 the second Wednesday.

4 MR. HART: Second and third -- second
5 and fourth.

6 CHAIRPERSON REID: Okay.

7 MS. KING: And then we will not be
8 hearing waste management until October, is that
9 correct? You're going to reschedule waste
10 management?

11 CHAIRPERSON REID: Yes, waste management
12 was supposed to have a day all to itself.

13 MS. PRUITT: You mean you're going to
14 schedule the decision?

15 MR. HART: All by itself, yes.

16 MS. KING: The date was set for waste
17 management to have the 22nd.

18 MR. HOOD: It was set for the 22nd,
19 because I was present when we made that date.

20 MS. KING: Absolutely.

21 CHAIRPERSON REID: And that's a third
22 Wednesday. Well, we're going to have schedule a day
23 for waste management. I don't know how that
24 happened, but nonetheless. What's the last
25 Wednesday in September?

26 MR. HART: Last Wednesday is the 29th.

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1 CHAIRPERSON REID: Somehow we need to
2 make that adjustment.

3 MR. PERNELL: Madam Chair, I understand
4 that we have to have a response by August 25th.

5 CHAIRPERSON REID: Correct.

6 Mr. Hart --

7 MR. PERNELL: The ANC, for the record,
8 the ANC are out in August. None of us will be in
9 town. We're not going to call a special meeting, so
10 I want to say is it okay for the single member
11 district to address a letter to the concerns that
12 we've had here today.

13 MS. PRUITT: It would not be given great
14 weight. I mean, our regulations require that it be.

15 MR. PERNELL: We don't meet until
16 September.

17 MS. PRUITT: So that's an issue we need
18 to deal with. I mean, if the Board then would -- if
19 they want to consider the ANC based on what you're
20 stating, means it would have to go on our October
21 agenda.

22 CHAIRPERSON REID: There are two things.
23 You don't think that in the month of August there
24 could be a special meeting.

25 MR. PERNELL: From January 7th, Madam
26 Chair, we've had 3 meeting a month already taken out

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1 of personal time and from work, and they're not
2 being compensated for it. They do not, everyone has
3 said the same, when they found out that we were out
4 in August, that's when all of them planned their
5 vacation for August.

6 CHAIRPERSON REID: We'll fix that time
7 because until the ANC can meet, we cannot -- you
8 know, we don't have another letter to replace this
9 letter.

10 MR. PERNELL: That would be up to the
11 single member Janice Schmidt, and I don't know if
12 you're going to be out of town in August.

13 MS. SCHMIDT: Just until August -- I'll
14 be available after --

15 MS. PRUITT: But that is the
16 understanding that the single member district letter
17 would be coming as a letter, it would not carry the
18 great weight as a full ANC.

19 MS. SCHMIDT: We have a regular meeting
20 scheduled in September.

21 MR. PERNELL: In September.

22 MR. HOOD: When is your regular meeting?

23 MR. PERNELL: I think it's September the
24 7th, if that's the first Thursday in September.

25 CHAIRPERSON REID: The second is the
26 first Thursday.

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1 MR. PERNELL: The 2nd is the first
2 Thursday.

3 MS. PRUITT: That's just before Labor
4 Day, so I don't know if you meet.

5 MR. PERNELL: Is Labor Day, what, on a
6 Monday? We'll still meet.

7 CHAIRPERSON REID: Yes, August is over,
8 so vacation should be out of the way, right?

9 MR. PERNELL: Monday is the holiday,
10 that's the --

11 CHAIRPERSON REID: The 6th.

12 MR. PERNELL: You said the first
13 Thursday of September is the second?

14 CHAIRPERSON REID: Yes.

15 MR. PERNELL: Yes, we meet.

16 CHAIRPERSON REID: Okay. You meet at
17 that time.

18 MR. PERNELL: We had that before.

19 MR. BROWN: So, Madam Chair, I'm getting
20 concerned, but under that schedule I think we could
21 go forward on decision on the 8th.

22 MS. PRUITT: Well, that's if you then
23 waive your right for 7 days to respond to the ANC,
24 because that really is what's being --

25 MR. BROWN: I'll waive my right to
26 respond. We can proceed in that fashion. So that

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1 if they meet --

2 CHAIRPERSON REID: So you can do it --
3 you can respond in less than 7 days.

4 MS. PRUITT: That will be less than two
5 days because we meet on the 8th. No, I am sorry, it
6 would be less than 7 days. We would like to have it
7 probably by the Friday so we can get out some
8 packages.

9 CHAIRPERSON REID: Wait, wait.

10 MS. KING: However, since they are being
11 so accommodating, there is no reason we can't waive
12 our rules in order to receive it even on the day of
13 our hearing. I mean, presumably they are not going
14 to write --

15 CHAIRPERSON REID: Well, the next day is
16 just not --

17 MR. HOOD: Madam Chair, I believe we
18 should be fair across the board. I am concerned
19 about the two groups getting together, the applicant
20 and the community working together. I hear us
21 talking about the time, but I don't see that we will
22 be making time for that resolution. So like you
23 said, Madam Chair, our decision will be a lot easier
24 --

25 MR. SCALLAN: Mr. Hood, I am available
26 to meet --

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1 CHAIRPERSON REID: From this day on the
2 21st of July, all of August and into September, they
3 have the time to try to get together to have this
4 meeting.

5 MR. HOOD: Let me just say this. This
6 is probably far-fetched. But a lot of community
7 groups and other groups, whether the group is
8 getting paid or not, they are not going to do a
9 whole lot of work in August. Let's face the reality
10 of it. I know the Zoning Commission, we don't even
11 have a meeting in August. We plan our vacation -- I
12 am not sure about the BZA, but that is something I
13 think we need to take into consideration.

14 MR. PERNELL: Madam Chair, 6A has taken
15 that under consideration. We are volunteer and we
16 have worked extremely from January 7 to the present
17 on special PUDs that came before us by way of the
18 BZA. So we are not going to make any exception in
19 August. We are allowed that under the law and we
20 are going to continue with that. That doesn't
21 preclude the body here to meet with the single
22 member ANC to get that meeting on and bring it back
23 for a September vote from the body of the 6A
24 Commission.

25 MR. HOOD: As long as everybody -- all
26 players feel confident.

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1 MS. PRUITT: Madam Chair, could I hear
2 some clarification for the record so that we will be
3 sure everything gets in? ANC meetings on September
4 2, is that correct?

5 MR. PERNELL: Is that the first
6 Thursday? MS. PRUITT: Yes.

7 MR. PERNELL: Correct.

8 MS. PRUITT: When would you be able to
9 get your report into the office?

10 MR. PERNELL: The very next day.

11 MS. PRUITT: Friday? Because Monday is
12 a holiday. I am just trying to be sure. Excuse me
13 one second. Once Commissioner Janet Schmidt has had
14 a meeting in her community sometime in August when
15 she is off her vacation, then she will bring that as
16 a recommendation from her single member district to
17 the body of 6A on the 2nd. We will vote on it at
18 that regular meeting and I will forward it. I
19 already have the letter drafted of what we are
20 probably going to say and the gist of what she is
21 going to say and we will forward it.

22 MS. PRUITT: So you will that submitted
23 to this office by September 3, that Friday?

24 MR. PERNELL: September 3.

25 MS. PRUITT: I just wanted to be sure.

26 MS. KING: Can you fax it to Mr. Brown?

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1 Mr. Pernell, can you fax a copy -- when you fax it
2 over here, can you fax a copy to Mr. Brown?

3 MR. PERNELL: I will bring it down
4 personally, Madam Chair.

5 MS. KING: I am not the chair. To Mr.
6 Brown?

7 MR. PERNELL: I know. But at one time
8 you were.

9 MS. KING: To Mr. Brown?

10 MR. PERNELL: Mr. Brown? Specifically
11 to Mr. Brown?

12 MS. PRUITT: He is the party. I mean,
13 he is the applicant. So if you can serve it on the
14 applicant or fax it to him, that would be very
15 helpful. And then the Board is waiting to let Mr.
16 Brown submit anything up to the day of the meeting,
17 correct?

18 MR. PERNELL: Okay. My first
19 responsibility is to get a copy to the BZA, right?

20 MS. PRUITT: Both.

21 MS. KING: Both.

22 MS. PRUITT: Because he has -- he is
23 waiting --

24 MR. PERNELL: I never had this put on me
25 before. I know I have a responsibility by law to
26 respond to the BZA, but no other parties. But --

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1 MS. PRUITT: Well, that is because we
2 are also -- we are shortening the time.

3 MR. PERNELL: I will -- since I have
4 Peabody here and I am trying to be fair to the
5 community, I will do that.

6 MS. KING: Oh, you are wonderful.

7 MR. PERNELL: This has never been upon
8 me before.

9 MS. PRUITT: For the record, Madam
10 Chair, then you are going to allow Mr. Brown up
11 until the meeting date to respond, is that correct?

12 CHAIRPERSON REID: Yes.

13 MS. PRUITT: I just wanted to be sure so
14 we have it in there. If it is ever contested, we
15 will have what is needed.

16 CHAIRPERSON REID: Now, is the PTA going
17 to submit something through the ANC or are you --

18 MS. LORD: We will -- Madam Chair, we
19 will submit our own separate letter. We already did
20 submit a petition signed by 70 of our members --

21 MS. KING: I am sorry, what?

22 MS. LORD: I am sorry. We will submit a
23 letter detailing our objections if you would like.

24 MS. KING: By the 25th of August?

25 MS. LORD: Absolutely. Absolutely. I
26 could do it by next week. And we already did submit

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1 a petition and you should have copies of that in
2 your application.

3 MS. KING: That has not been received.
4 I haven't seen it.

5 MS. LORD: I submitted it yesterday in
6 person.

7 CHAIRPERSON REID: No, we don't have
8 that.

9 MS. PRUITT: Yes, we do. We didn't have
10 it -- we had no -- there was no case number or
11 anything on it. We had a hard time identifying
12 that.

13 MS. LORD: I am sorry. I gave it to the
14 young woman and told her the case number.

15 MS. PRUITT: It was not written on
16 there. We can put it in the record. I looked
17 through that and I asked everybody in the office.

18 MS. LORD: I was just making sure you
19 had it. Thank you.

20 MR. HOOD: Madam Chairman, I thought the
21 reason that the ANC rescinded their position was
22 because of the position of the school. I thought
23 they would be working together along with the
24 school. I may be incorrect. But to submit your
25 letter --

26 MS. LORD: We will work also with the

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1 ANC. We would like to work also with the ANC.

2 MR. PERNELL: I just wanted an objection
3 to what you said. Also, because I thought that once
4 we work out an agreement from the two bodies meeting
5 that there would be no need for your letter. We
6 will work it out so that we can make a vote on it.

7 CHAIRPERSON REID: Right. Well, if that
8 is the way you all want to do it, then the ANC will
9 --

10 MR. PERNELL: If Peabody is going to
11 submit a letter of opposition, there is no need for
12 the ANC to convene.

13 MR. HOOD: So you are saying the ANC
14 would continue to keep their position?

15 MS. SCHMIDT: I think Mr. Hood's point
16 is he would prefer that you didn't send a letter
17 tomorrow or next week but until after the parties
18 have had an opportunity to meet.

19 MS. LORD: Okay. That is fine.

20 MS. SCHMIDT: That is what I think he is
21 saying.

22 MS. PRUITT: Excuse me, Madam Chair, but
23 we have a procedural issue now again.

24 CHAIRPERSON REID: All right.

25 MS. PRUITT: The applicant has the right
26 to respond. So we need to get information -- if you

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1 are going to keep this on the September 8 meeting,
2 the applicant has the right to respond -- has 7 days
3 to respond. We are waiving that requirement for the
4 ANC because they don't meet in August. So that is a
5 special exception. But if Peabody or the school
6 would like to participate in the process and being
7 able to follow due process and let the applicant
8 have his right, then they have to have it in by
9 September 25.

10 MR. HOOD: August 25.

11 MS. PRUITT: I am sorry, August. In
12 order to make it September 8.

13 MR. PERNELL: Well, we hope that the
14 applicant will -- excuse me, Madam Chair, we hope
15 that the applicant will attend that meeting along
16 with us so that they would be privy to any
17 information said at that meeting. And, therefore,
18 they will be abreast of what is going on and be able
19 to track, and I will make sure that we follow up as
20 the chairperson that we are saying the same thing
21 and that is what the purpose of the --

22 CHAIRPERSON REID: Mr. Brown, is that
23 all right with you?

24 MR. BROWN: It is fine that the Peabody
25 group would like to submit a separate letter. I
26 would like to have that in advance so that I am not

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1 responding. Number one, they may be the same or
2 they may not. So I would like to take --

3 CHAIRPERSON REID: August 25th?

4 MR. BROWN: Staff's suggestion and have
5 a deadline for the letter.

6 CHAIRPERSON REID: Okay. August 25 for
7 your letter to be in. Thank you. All right. I
8 think that that basically sums up and wraps up this
9 difficult case.

10 MR. BROWN: Thank you, Madam Chair.

11 CHAIRPERSON REID: Thank you very much.
12 All right. The next case, Mr. Hart? 16473?

13 MR. HART: Application No. 16473 of
14 Parkmont School, Inc., pursuant to 11 DCMR 3108.1,
15 for a special exception under Subsection 206 to
16 establish the use and to continue the use of a
17 private secondary school for 65 students and 8 staff
18 and under Section 3107.2 for a variance for renewal
19 of the parking, basement, first and second floors in
20 an R-1-B District at premises 4842 16th Street,
21 N.W., Square 2654, Lot 34. Would all persons
22 intending to testify please rise and raise your
23 right hand?

24 (WITNESSES ARE SWORN.)

25 CHAIRPERSON REID: All right. Give your
26 name.

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1 MS. COOK: My name is Susan Cook and I
2 am with Hogan and Hartson and we represent the
3 applicant, Parkmont School.

4 MR. MCCLAIN: My name is Ron McClain and
5 I am the Director of the Parkmont School.

6 CHAIRPERSON REID: There is no -- there
7 does not appear to be anyone here in opposition to
8 your case and we have not received any letters.

9 MS. COOK: That is correct.

10 CHAIRPERSON REID: So in that instance,
11 what the Board typically does is to allow you to
12 stand on the record of your submission, because you
13 are basically asking for a renewal, right? And just
14 give us the salient points so we can get through
15 this relatively quickly. Okay? If you have
16 something you would like to say or if you would like
17 to put remarks on the record, you are perfectly
18 welcome to do so.

19 MR. MCCLAIN: No. Nothing much. I have
20 been the director of the school for the last eight
21 years and I think we have done a good job of working
22 collaboratively with our neighbors.

23 CHAIRPERSON REID: All right, give your
24 address.

25 MR. MCCLAIN: The address of the school
26 is 48 --

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1 MS. KING: No, your home address.

2 CHAIRPERSON REID: I am sorry, give your
3 name and your address.

4 MR. MCCLAIN: My name is Ron M C C L A I
5 N. And my address is 14 Jefferson Avenue, Takoma
6 Park, Maryland.

7 CHAIRPERSON REID: And give your title.

8 MR. MCCLAIN: And I am the Director of
9 the Parkmont School.

10 CHAIRPERSON REID: All right. Do you
11 have some remarks that you would like to make?

12 MR. MCCLAIN: Actually, I have nothing
13 to add to the petitions we have written. We have
14 been working very closely with our neighbors over
15 the time of my directorship of the school and I am
16 pleased to see that we have by and large their
17 support.

18 MS. KING: I would note for the record,
19 Madam Chair, that we have a number of letters from
20 neighbors written with great care and attention to
21 detail and strongly in support of this school.

22 MS. COOK: And, Madam Chair, we would
23 like to request if the Board is inclined to approve
24 our application that the variance be extended to
25 five years instead of five.

26 CHAIRPERSON REID: Do you have a

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1 previous order?

2 MS. KING: I have not the entire
3 previous order, but I have the conditions from the
4 previous order, which are that the operation of the
5 school should be limited to the Somerset School. It
6 is the identical school? You just changed the name?

7 MR. MCCLAIN: It changed its name.

8 MS. KING: There has been no change in
9 the management or the Board of Trustees except for
10 the usual turnaround? I mean, it is the same legal
11 entity?

12 MR. MCCLAIN: For the structure and
13 purpose, absolutely.

14 CHAIRPERSON REID: Okay.

15 MS. KING: The number of students shall
16 not exceed 65 and the number of faculty and staff
17 shall not exceed 8. No non-school related
18 activities on the premises. Landscaping in
19 accordance with the exhibit that was in the record
20 earlier. It was for the period of five years.
21 Three parking spaces provided on the site. Do you
22 actually provide more than three or is three the
23 number you have? And there should be no enlargement
24 of the existing paved area on the site.

25 CHAIRPERSON REID: I have one question.
26 Generally, the ages of your students are what?

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1 MR. MCCLAIN: They are middle school and
2 high school students.

3 CHAIRPERSON REID: What are the ages?

4 MR. MCCLAIN: 12 to 18 or 11 to 18.

5 CHAIRPERSON REID: 12 to 18?

6 MR. MCCLAIN: Junior high school and
7 high school.

8 CHAIRPERSON REID: Let me see, we have
9 ages in the conditions --

10 MR. MCCLAIN: I am not sure we --

11 MS. KING: It just says students are 65
12 and the faculty and staff not to exceed 8.

13 MR. MCCLAIN: 65

14 CHAIRPERSON REID: Oh, okay. All right.

15 MS. KING: Do you have a formal
16 arrangement with Carter Barron for parking? Because
17 you mentioned that when your students -- because
18 when you get into the secondary school, a lot of
19 students as soon as they legally can get cars. And
20 you mentioned that you use the parking at Carter
21 Barron. Do you have a legal arrangement to do that?

22 MR. MCCLAIN: Not that I am aware of.
23 We had two or three students as an average over the
24 last five years who used that parking lot. There is
25 about 25 to 30 cars in that lot on a daily basis.
26 It has space, I am guessing, for between 300 and 700

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1 cars.

2 MS. KING: Yes. When there is an event
3 going on and so forth, it is packed.

4 MR. MCCLAIN: Right. And my experience
5 with that just in the eight years that I have been
6 there is that that happens primarily during the
7 professional tennis tournament which takes place
8 fortunately from our point of view during the
9 summer.

10 MS. KING: Yes. And also the
11 Shakespeare Festival and so forth. But again, that
12 is at night and during the summer.

13 MR. MCCLAIN: Right.

14 CHAIRPERSON REID: Now you said that you
15 would like to ask for additional time.

16 MS. COOK: If that would be possible.

17 CHAIRPERSON REID: Okay. Now your
18 current BZA order expired, did it not?

19 MS. COOK: It did.

20 CHAIRPERSON REID: When?

21 MS. COOK: It was issued in August of
22 1991 and it expired in August of 1996. Parkmont
23 filed an application in July of 1996 to start the
24 process for the renewal and due to a technical
25 glitch in the application, it was required to engage
26 in a series of correspondence back and forth with

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1 the BZA and the BLRA and has finally gotten the
2 opportunity to come before you today.

3 CHAIRPERSON REID: So your delay has
4 been as a result of getting through the red tape and
5 the bureaucracy? Is that what you are saying?

6 MS. COOK: A combination of it, yes. To
7 some extent, that is true. And to some extent, it
8 has also been a result of the individual who was
9 handling the matter for the firm has subsequently
10 left the firm.

11 CHAIRPERSON REID: But also you had
12 another order in 1983 that you renewed in 1989. And
13 I think that was also --

14 MS. COOK: The one that was renewed in
15 1989 was -- the hearing occurred in 1989. But if
16 you look at our application as attached, the 1989
17 hearing, the order was not issued until 1991.

18 CHAIRPERSON REID: Okay.

19 MS. COOK: For whatever reason.

20 CHAIRPERSON REID: How much time are you
21 requesting?

22 MS. COOK: We would request 10 years.

23 CHAIRPERSON REID: Well, I would like to
24 see that your renewal -- that your renewal fee is
25 done in a timely manner. So given your history, we
26 may have to -- just let us give some thought to that

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1 for the moment. Let us do the rest of the case. Do
2 you have any other statements? Questions for them?

3 MR. HOOD: Madam Chair, the only thing I
4 would say is I too am concerned about the 10 year
5 piece. Was that put on the table when you -- with
6 anyone in the community about 10 years before you
7 come back in front of the BZA? Was that put out
8 before you came here today? As opposed to getting
9 what you had, 5 years? As opposed to -- you had 5
10 years I believe, right?

11 MS. KING: Yes, but the 5 years expired
12 three years ago.

13 MR. HOOD: Right. I understand that.
14 But I am saying now they are asking for 10. Has
15 that been put out to anyone in the community? Have
16 you --

17 CHAIRPERSON REID: The ANC and --

18 MR. HOOD: ANC or anyone.

19 CHAIRPERSON REID: Has they got a feel -
20 -

21 MR. MCCLAIN: You know, that is actually
22 a very fair question in terms of the procedure.
23 Because the discussion at the ANC was along the
24 lines of us simply renewing. And as you read the
25 conditions of these, one of the conditions was the
26 five years. That was one of the 8 conditions that

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1 got carried over. So I think it would be fair to say
2 that the ANC didn't have -- was not given the
3 opportunity. And I, myself, as the only person who
4 went to the ANC and I also went to the single member
5 meeting before that and had discussions that I
6 thought were --

7 CHAIRPERSON REID: And they didn't send
8 a letter --

9 MR. MCCLAIN: We did not address -- we
10 have a letter.

11 MS. COOK: Do you have the ANC letter?

12 MS. KING: Yes, I do.

13 CHAIRPERSON REID: What does it say?

14 MS. KING: That they are duly --

15 CHAIRPERSON REID: What ANC is that?

16 MS. KING: 4C.

17 CHAIRPERSON REID: 4C.

18 MS. KING: ANC 4C. It is signed by the
19 chairperson, Willie Flowers. They met on the 13th -
20 - Tuesday, the 13th of July. There was a quorum.
21 Public notice was given. All 9 commissioners voted
22 in favor of adopting the application.

23 CHAIRPERSON REID: Did it specify the
24 return?

25 MS. KING: It did not.

26 MS. COOK: We would, of course, be

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1 delighted with 5 years.

2 CHAIRPERSON REID: Yes. You see, the
3 thing about it is our hands are kind of tied.
4 Because once you go to the ANC and you discuss --
5 well, you don't discuss anything to the contrary,
6 the assumption is that the renewal is going to be
7 predicated upon the previous order and it was for 5
8 years. So not unless we were convinced or persuaded
9 to change that, that probably will end up it.

10 MR. MCCLAIN: Mr. Hood, it would be
11 appropriate, one, for us to obviously be more
12 timely. But the time that we do this again, we
13 would raise that. If that were the singular thing
14 that we were going to address differently, we would
15 point that out to them at that point. That we are
16 going to go in and ask for a straightforward renewal
17 with the change that we could possibly get an
18 extension. And then we would ask them to note
19 whether or not they approve that in their letter to
20 you so that you would have evidence that we had
21 talked with them and had dealt with them above.

22 MR. HOOD: Right. That is the way to
23 go.

24 MR. MCCLAIN: Okay.

25 CHAIRPERSON REID: To your knowledge,
26 have you had any complaints -- has there been any --

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1 from the abutting neighbors in regard to traffic,
2 parking, noise in regard to your program operation
3 or your school operation?

4 MR. MCCLAIN: The letters in the packet
5 include our most immediate neighbor, and a neighbor
6 who is most directly impacted by any -- if there
7 were any parking problems, because they are right
8 across the street from us. We have one other
9 neighbor that we abut with who was a participant in
10 earlier processes but at this point has no complaint
11 that I am aware of.

12 CHAIRPERSON REID: All right. Well,
13 there is no one here in opposition or in support.
14 So do you have any closing remarks?

15 MR. MCCLAIN: No. You have had a long
16 day.

17 MS. COOK: Would you like to have a
18 summary order or bench decision?

19 MS. COOK: Bench decision.

20 CHAIRPERSON REID: Are you going to make
21 the motion?

22 MR. HOOD: Yes. I make the motion that
23 we approve Case No. 16473.

24 MS. KING: I second that motion.

25 MR. HOOD: And I will ask, Ms. King,
26 that we also put on the conditions, which I don't

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1 have in front of me.

2 MS. KING: We will duplicate the
3 conditions in the existing -- in the order that
4 expired in 1996, with the following -- with the sole
5 exception, that the name of the school is the
6 Parkmont School and not the Somerset School. The
7 five-year provision will remain in.

8 MS. COOK: The conditions in 1996, there
9 were actually only three. That approval shall be
10 for five years. Three parking spaces shall be
11 provided on site. And then the conditions from the
12 prior order shall remain in effect. And that would
13 pull in the ones from the earlier.

14 MS. KING: Okay. All right. Whatever.
15 So I guess I just ripped out the stuff from the
16 original order.

17 MS. COOK: Just to clarify.

18 MS. KING: So let's be economical about
19 it and do the same thing. Say it is for five years,
20 change the name of the school, and incorporate the
21 previous conditions.

22 CHAIRPERSON REID: Okay. All in favor?

23 ALL BOARD MEMBERS: Aye.

24 CHAIRPERSON REID: Opposed?

25 MS. PRUITT: Staff will record the vote
26 as 3 to 0, motion made by Mr. Hood and seconded by

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1 Ms. King.

2 CHAIRPERSON REID: Thank you.

3 MR. MCCLAIN: Thank you very much for
4 your time.

5 CHAIRPERSON REID: You should have your
6 order in about two weeks.

7 MR. HART: Application No. 16478 of East
8 Friendship Baptist Church, pursuant to 11 DCMR
9 3108.1, for a special exception under the provisions
10 of Section 205 to establish a child development
11 center with 20 children ages 5 through 11 years and
12 4 staff persons on the first floor in an R-2

13 District at premises 231 44th Street, N.E., Square
14 5136, Lot 59. CHAIRPERSON REID: There is
15 only one person?

16 MS. JOHNSON: Someone else was here but
17 he had to leave.

18 CHAIRPERSON REID: Okay. All right.

19 MR. HART: Please raise your right hand
20 to take the oath.

21 (WITNESS IS SWORN.)

22 CHAIRPERSON REID: Please give your name
23 and address.

24 MS. JOHNSON: Alberta Johnson.

25 CHAIRPERSON REID: Ms. Johnson, there
26 does not appear to be any opposition to your case

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1 either. As such, if you would like, we can expedite
2 this. You can stand on your record which you have
3 submitted for the most part.

4 MS. KING: I am sorry, I don't think
5 that the record has hit the issues.

6 CHAIRPERSON REID: No, no, let me
7 finish. Your request is under 205 for a child
8 development center. And what you've got to do is
9 just demonstrate that you comply with the conditions
10 or the stipulations under that section. Are you
11 familiar with that?

12 MS. JOHNSON: The stipulations under
13 that section?

14 CHAIRPERSON REID: 205. That is what
15 you are here for.

16 MS. JOHNSON: Yes.

17 CHAIRPERSON REID: Do you have that?

18 MS. JOHNSON: Do I have what? Okay.

19 MS. PRUITT: Do you have Section 205
20 from the zoning regulations with you?

21 MS. JOHNSON: Yes.

22 CHAIRPERSON REID: That is what you have
23 to respond to. That is all. Basically go over that
24 and we can basically expedite your case.

25 MS. JOHNSON: Okay. It is a split level
26 house that the church purchased and we wanted a

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1 daycare center there and they said that it had to be
2 zoned because it wasn't zoned for that. We wanted
3 20 children. We have a school across the street
4 from the church, so we wanted a before and after
5 daycare center in addition to having children from
6 age 2 to 5 or 2 to 6.

7 CHAIRPERSON REID: What else do you
8 have?

9 MS. JOHNSON: I sent the letter here
10 stating that we wanted 20 children and we wanted to
11 open up from 6:00 to 6:00.

12 CHAIRPERSON REID: Okay. Will you give
13 us a copy or did you get a copy of Section 205.
14 That is what you are going to have to address here
15 today. Let me show you.

16 MS. JOHNSON: I don't understand what
17 you are asking me.

18 CHAIRPERSON REID: All right. Have you
19 seen this before? Come forward. Have you seen
20 this? This is what your case is all about.

21 MS. JOHNSON: Yes.

22 CHAIRPERSON REID: Did you see this
23 before?

24 MS. JOHNSON: The one I had was --

25 CHAIRPERSON REID: You have to give it
26 to staff.

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1 MS. PRUITT: Madam Chair, I can help,
2 please. She has an application from DCRA for the C
3 of O, which is what precipitated her coming here.
4 And she has our application, which isn't actually
5 signed. So I guess you filled out one that you
6 signed and you left it with us, which is in there.

7 MS. JOHNSON: Yes.

8 MS. PRUITT: So, no. It appears that
9 she has not looked at at all the regulations that
10 she needs to address.

11 CHAIRPERSON REID: Well, then let's do
12 this.

13 MS. JOHNSON: What I was -- excuse me.

14 CHAIRPERSON REID: Let me finish,
15 please. Then the thing to do was I was assuming
16 that you had
17 -- I was, I guess, taking the liberty to assume that
18 you had already completed your application and you
19 had responded to the Section 205, which is what you
20 have to answer. Those are the -- that is the
21 section in the regulation that you have to respond
22 to. Okay? Now what we can do is to -- rather than
23 to continue your case, it is pretty straightforward.
24 We can allow you to sit over there and to respond to
25 that section, each of the different subsections
26 under it -- under 205. And then we can proceed with

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1 the next case and then take your next case after.

2 MS. PRUITT: Madam Chair, may I make a
3 suggestion? Mr. Nyarku, the project manager, did
4 try to contact the applicant but was unable to.
5 Maybe at this point, he can sit down and talk with
6 her and walk her through what she needs to address
7 so hopefully we can then --

8 CHAIRPERSON REID: You mean now?

9 MS. PRUITT: Correct.

10 CHAIRPERSON REID: Okay. All right.

11 MS. PRUITT: And then maybe we can --
12 that will help --

13 CHAIRPERSON REID: When you come here --
14 and I realize that there is sometimes for some
15 reason or another persons coming who are not
16 prepared. I was hopeful that you had -- although
17 you didn't submit it, that you had it there with you
18 and that you could do it orally. Since you didn't,
19 don't worry about it. You can do it. Mr. Nyarku
20 will you assist you and we will continue through
21 with another case and if you are ready, we will take
22 you after that.

23 MS. JOHNSON: Thank you.

24 CHAIRPERSON REID: All right. Next
25 case, please?

26 MR. HART: Okay. Application No. 16459

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1 of Marquette University pursuant to 11 DCMR 3108.1
2 for a special exception under Subsection 206C for
3 purposes of a private school for 20 students and two
4 staff persons in an R-4 District at premises 502
5 East Capital Street, N.E., Square 840, Lot 23.

6 Would you please raise your right hand for the oath?

7 (WITNESSES ARE SWORN.)

8 MS. KING: Mr. Simon, are you
9 testifying? Were you sworn in?

10 MR. SIMON: No, we weren't.

11 MS. KING: Why not?

12 MR. SIMON: Well, I was --

13 MS. KING: Anybody who -- Paul, we've
14 got some more people to be sworn in.

15 CHAIRPERSON REID: Mr. Pernell, are you
16 testifying?

17 MR. PERNELL: I have been sworn in.

18 CHAIRPERSON REID: For each case, sir.

19 UNIDENTIFIED SPEAKER: Madam Chair, an
20 inquiry, please. Two of us are here as neighbors
21 and witnesses and would like to request party
22 status.

23 CHAIRPERSON REID: Let's swear in and
24 then we can do that. Are you Jean Marie Neal?

25 MS. GARRISON: No, I am not. I am
26 Loretta Garrison and this is Holmes Brown.

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1 CHAIRPERSON REID: Okay. Let's do the
2 swearing in first.

3 MS. PRUITT: Because if you testify in
4 whatever status, you have to be sworn in.

5 MS. KING: Is Ms. Neal out in the hall?

6 MR. SIMON: Yes, I think so.

7 MS. KING: Well, would you go get her so
8 we don't have to do a third swearing?

9 MS. PRUITT: Can you wait a minute to
10 make sure we swear everyone in?

11 MR. HART: Is everyone here? Is
12 everyone here for Marquette University?

13 MR. SIMON: Yes.

14 MR. HART: Please raise your right hand
15 to take the oath.

16 (WITNESSES ARE SWORN.)

17 CHAIRPERSON REID: Okay. Now you
18 requested party status. I know a Jean Marie Neal,
19 can you come forward? And you, also, ma'am. Are
20 those the only two requesting party status?

21 MS. GARRISON: No, there are three of
22 us.

23 CHAIRPERSON REID: All right. Come
24 forward, please. Are you two together?

25 MR. BROWN: No, we are neighbors.

26 CHAIRPERSON REID: Neighbors? And you

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1 are a neighbor too?

2 MS. NEAL: Yes.

3 CHAIRPERSON REID: Okay. Is there any
4 reason why your concern can't be aired through your
5 ANC?

6 MS. PRUITT: Basically, ma'am, you need
7 to prove to the Board that you are more affected
8 and/or aggrieved to a greater extent than the
9 surrounding community and that you don't have the
10 same general concerns as your surrounding community.

11 MS. GARRISON: If I may?

12 CHAIRPERSON REID: Sure.

13 MS. GARRISON: I live at number 843 --

14 MS. BAILEY: Name and address?

15 MS. GARRISON: Loretta G A R R I S O N.
16 I reside at 8 Fourth Street, S.E., which is adjacent
17 to the building that Marquette University has been
18 using as its dormitory for the past two or three
19 years, and we have been very directly and adversely
20 impacted by the operation of the unsupervised
21 dormitory there because of the students and a whole
22 host of problems that have ensued.

23 CHAIRPERSON REID: Okay.

24 MS. GARRISON: And we did not receive
25 notice of this hearing because we are outside the
26 radius of the address at 502 East Capitol Street,

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1 N.E., which is where, I believe, the educational
2 offices of Marquette University are located, and we
3 only happened to notice the sign on Sunday night,
4 which is the only reason that we happen to be here
5 today. So we had very little notice of this.

6 CHAIRPERSON REID: Excuse me, ma'am.
7 You are adjacent to, but you are more than 200 feet
8 --

9 MS. GARRISON: No, no, no. It is two
10 different buildings. The building where Marquette
11 University -- the applicant before you today
12 concerns 502 East Capitol Street. However, as a
13 part of that operation and as a part of the
14 application to run a school, they are housing and
15 have been housing their students in a dormitory in a
16 small apartment building which is right next door to
17 me.

18 MS. PRUITT: Madam Chair, while I
19 understand that is true and I am not disputing the
20 fact, this particular case only goes to the property
21 at -- I am sorry, I just lost the address.

22 MS. GARRISON: 502 East Capitol.

23 MS. PRUITT: 502 East Capitol.

24 MS. GARRISON: But the reason that we
25 are here, Madam Chair and members of the Board, is
26 because the operation of this school cannot be

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1 considered without the consideration by the Board of
2 the overall operation, which includes how and where
3 they are going to house the students that they are
4 going to have attending the school. And in fact,
5 they have been operating or using the building right
6 next to me as the dormitory for these students for
7 the past two to three years. So, that -- and
8 clearly the way they run that goes directly to the
9 way they intend to operate their facility.

10 MS. PRUITT: Madam Chair, you might want
11 to ask the applicant. This dorm is in a residential
12 neighborhood?

13 MS. GARRISON: Yes.

14 MR. COTTINGHAM: Well, if I may, it is
15 not a dormitory. It is an apartment building.

16 MS. PRUITT: Is it allowed by matter of
17 right?

18 MR. COTTINGHAM: It is an apartment
19 building used for residential -- for students to
20 reside. It is not the building that is part of this
21 application.

22 MS. KING: But it is part of your campus
23 in Washington?

24 MR. COTTINGHAM: No. We don't own it.
25 We rent space in it.

26 MS. NEAL: We beg to differ. If we

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1 could present --

2 CHAIRPERSON REID: Your name?

3 MS. NEAL: I am sorry, I have never
4 testified before you before. So I apologize.

5 CHAIRPERSON REID: Name and address.

6 MS. NEAL: Jean Marie Neal. I live at
7 621 A Street, N.E. I think there is a lot more to
8 this application -- a lot more is involved with
9 Marquette than just the application you have before
10 you for 20 students.

11 MS. KING: But, we are not hearing your
12 case now. What we are deciding is party status.

13 MS. NEAL: I am just saying that if we
14 could present our information, I think you would see
15 the tie in.

16 CHAIRPERSON REID: Okay. I think this
17 is what we have to do. Your relationship to this
18 case is not germane to what we are here for today.
19 However --

20 MS. NEAL: I am here to give testimony
21 on 502 East Capitol.

22 CHAIRPERSON REID: Let me finish.

23 MS. NEAL: No, there is a difference.

24 CHAIRPERSON REID: Let's get a
25 clarification. You are -- you did not receive
26 notice.

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1 MS. NEAL: That is correct.

2 CHAIRPERSON REID: You are not within
3 200 feet of the school.

4 MS. NEAL: 502. But we are --

5 CHAIRPERSON REID: Okay. Now, the
6 residence is not a part of this case today. So --

7 MS. NEAL: Well, but I think our point,
8 Madam Chair, if I may, is that in fact wherever and
9 however they house the students for the school that
10 they run is in fact germane and the issue is the
11 adverse impacts --

12 CHAIRPERSON REID: Would you let me
13 finish? Let me finish. Let me finish. Again, we
14 have to follow procedure. Okay? We have
15 regulations that we have to follow. And as such,
16 because of the fact that this particular address --
17 you are not within 200 feet of the address.
18 Therefore, while you will not be able to get party
19 status, you will be given the opportunity to testify
20 in support or in opposition. But you cannot receive
21 party status. That is an altogether different
22 category. So, I think that the objective would be
23 achieved basically and you will be able to testify
24 here today. That is what you want to do?

25 MS. NEAL: Yes, ma'am.

26 CHAIRPERSON REID: Okay. The party

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1 status is reserved for people or persons or parties
2 or entities within 200 feet of or they are more
3 aggrieved.

4 MS. NEAL: That is fine with me as long
5 as I can testify today.

6 CHAIRPERSON REID: Sure you can.

7 MS. GARRISON: Okay. But madam Chair, I
8 believe that our interest -- and Holmes Brown is
9 also directly adjacent to the building that is used
10 as the dormitory. Our particular interest is in
11 fact the way they operate this facility and the
12 adverse impact on us and what we are concerned about
13 is if -- and the reason that we are requesting party
14 status is if in fact there is a decision to move
15 forward and to approve this school, we are extremely
16 interested in ensuring that there are certain
17 conditions attached to this which directly affect or
18 directly impact the way they operate the dormitory,
19 wherever they happen to have that dormitory.

20 CHAIRPERSON REID: But it is not a
21 dormitory.

22 MS. GARRISON: It is a dormitory.

23 MS. PRUITT: Excuse me, ma'am. But that
24 is not in our jurisdiction because that case is not
25 before us. The Board does not have the authority to
26 impose --

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1 MS. GARRISON: I understand that you are
2 drawing strict bright lines here, but in fact the
3 two are connected.

4 MS. PRUITT: It is not strict lines. I
5 mean, it is just -- we can only act on what is
6 before us, ma'am.

7 MS. GARRISON: What we are trying to do
8 is to ensure that we have --

9 MR. HOOD: Madam Chair, I think we can
10 resolve this by her testifying. And her party status
11 is just so that they can ask the applicant
12 questions.

13 CHAIRPERSON REID: But, Mr. Hood, our
14 procedures will not allow us to grant party status
15 to someone --

16 MR. HOOD: But you didn't let me finish.

17 CHAIRPERSON REID: I am sorry.

18 MR. HOOD: I was just going to say that
19 I agree with you. I don't think that she has to
20 have party status. I think she can get her point
21 across just testifying.

22 CHAIRPERSON REID: That is what we said
23 earlier.

24 MR. HOOD: That is my point. I am
25 saying we are belaboring the point as we are going
26 on and on. CHAIRPERSON REID: But over

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1 and beyond that, Mr. Hood, she is insisting on party
2 status irrespective of the fact that we just said
3 that she can't be given party status.

4 MR. HOOD: If we take a vote --

5 MS. KING: And we are denying it.

6 MS. PRUITT: And you've denied it.

7 MR. HOOD: Oh, we have? Oh, I must have
8 been -- excuse me. I was out of the room.

9 CHAIRPERSON REID: We can't.

10 MS. KING: Party status is denied.

11 CHAIRPERSON REID: We cannot grant you
12 party status on a property that is not a matter of
13 this particular proceeding today.

14 MR. BROWN: How far does the 200 foot
15 radius --

16 MS. PRUITT: 200 feet from the
17 boundaries of the property.

18 CHAIRPERSON REID: 200 feet from the
19 subject property. Is it 502?

20 MR. BROWN: I understand. But I am just
21 wondering who the last -- I didn't have a tape
22 measure, so I am just wondering who the last person
23 notified was.

24 CHAIRPERSON REID: Circumference.

25 MR. BROWN: I am sorry. I --

26 MS. GARRISON: The specific address.

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1 CHAIRPERSON REID: Your issue is with a
2 different building. And that building is not --

3 MR. BROWN: I am simply trying -- I was
4 unaware of the 200 foot notice, and I am just
5 curious about if you take 200 feet from the building
6 in question, how far down towards the Capitol on
7 East Capitol Street did you get? 416?

8 MS. PRUITT: I would have to look in the
9 large file.

10 CHAIRPERSON REID: And also --

11 MR. BROWN: Okay. I heard the answer.

12 CHAIRPERSON REID: And also, any concern
13 that you have can be aired through your ANC
14 representative as well. So if you wanted to make
15 sure that you are sure of the conditions or
16 whatever, then that has to be discussed with your
17 ANC, which is the body that we recognize as
18 representing that particular geographical area.

19 MR. HOOD: Madam Chair, for the record,
20 I also would like to be recorded as voting to deny
21 her party status. I wasn't in the room, so I just
22 wanted to put that on the record.

23 CHAIRPERSON REID: Oh, we didn't really
24 vote.

25 MR. HOOD: Oh. I thought it was a vote.

26 CHAIRPERSON REID: We just did it by

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1 consensus.

2 MR. HOOD: Oh, okay.

3 CHAIRPERSON REID: And if you would
4 like, we can take a --

5 MR. HOOD: No, that is fine.

6 CHAIRPERSON REID: All right.

7 (Whereupon, at 6:00 p.m., the
8 proceedings went immediately into Evening Session.)

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E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:00 p.m.)

MR. COTTINGHAM: I would like to start by introducing who we are for the record. My name, for the record, is Steve Cottingham, I am Assistant Vice President and counsel for Marquette. I am an attorney for the University, but I am also an administrator at the University and may testify because I have been involved with this project back to 1995, when we acquired the building.

CHAIRPERSON REID: All right. Will you please project your voice. And can counsel testify?

MS. PRUITT: We have had this problem before.

MR. COTTINGHAM: I won't say much.

MS. PRUITT: If he testifies, I would say we would not take him as an expert witness. But he may testify.

MR. COTTINGHAM: It will be factual matters of which I have factual knowledge.

MS. PRUITT: All right. And you were sworn in, because generally counsels aren't. Thank you.

CHAIRPERSON REID: All right.

FATHER O'BRIEN: I am Father Timothy O'Brien. I am the Director of the Marquette

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1 University Les Aspin Center located at 502 East
2 Capitol. I also reside at that facility.

3 MR. COTTINGHAM: If you'd like, we
4 thought what we would do is open with Father
5 describing a little history of the program and the
6 proposed use of the premises.

7 FATHER O'BRIEN: Okay. I think what is
8 really important for you to understand is that what
9 we are talking about is the basement at 502 East
10 Capitol, which is used occasionally for seminars for
11 students that we train in a congressional internship
12 program and with federal agencies. I think part of
13 the misperception is when we put the notice out in
14 front of our building for the special exception --
15 and I'll get to how that came about in a minute --
16 it gave the impression that we were going to move 20
17 students into my residence -- into the building.
18 The Board of Zoning Adjustment sign suggests that we
19 are switching our status in some way. We are not
20 switching our status at all. We will continue to
21 operate the way we always have. And we began in
22 good faith in securing a permit following the rules
23 and regulations of the District of Columbia under
24 the rubric of a private club, because it in no way
25 is a full university. Our students register in
26 Milwaukee, where Marquette is located. I submit

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1 grades to Milwaukee where the students are located.
2 This is just a tangential experiential learning
3 program for a semester or a summer. And it is not
4 exclusive to Marquette. We have got people in our
5 neighborhood, one of whom has their daughter at
6 Boston College, that is interested in having their
7 young one study with us. Another neighbor has a son
8 at Miami of Ohio.

9 The whole issue of housing is a
10 completely separate issue from I think what we are
11 here today for. And the reason we are here today is
12 because the Capitol Hill Restoration Society had
13 challenged our private club status.

14 MR. COTTINGHAM: If you could, why don't
15 we go back a little bit to 1995. I did submit a
16 letter yesterday that you should have in your
17 packets that sort of details the history of how we
18 purchased this building and the conditions under
19 which we purchased it initially.

20 MS. PRUITT: It is in your supplemental
21 package?

22 FATHER O'BRIEN: But in Mr. Cottingham's
23 letter to you, he details exactly the chronology and
24 the issuance of certificates of occupancy. And as a
25 Catholic university and a value-centered educational
26 institute, we did absolutely everything to conform

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1 to the District of Columbia requirements. And I
2 give you that as my solemn word. We did everything.
3 We operated in good faith. We would not have bought
4 that building if we did not have the assurances from
5 the District of Columbia that we could operate for
6 the purposes that we are operating.

7 Now there have been rumors in the
8 neighborhood over time that we are misrepresenting
9 and that we don't have any concern for the District
10 of Columbia. That is very painful and it is just
11 plain not accurate. Our students volunteer in inner
12 city schools. They work in Habitat for Humanity.
13 We do a great deal of good to help build up this
14 community. And to show our demonstration of good
15 behavior to the community, when the Capitol Hill
16 Restoration Society challenged whether or not the
17 private club status was the rubric that we should
18 have gone in under, I believe -- and I believe Mr.
19 Schauer is here -- the challenge was that there
20 wasn't public notice given to the purchase of this
21 property for this particular use.

22 MR. COTTINGHAM: If I may just interject
23 for a second, the property is zoned R-4, and under
24 that classification, private club status is accorded
25 as a matter of right. And so, therefore, no public
26 hearing was required. It simply --

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1 MS. PRUITT: Excuse me, sir. Could you
2 speak up? I think the audience is having a hard time
3 hearing.

4 MR. COTTINGHAM: I am sorry. The
5 building is zoned R-4. Under that category, the
6 private club status is available as a matter of
7 right, so no public hearing is required. You simply
8 obtain the building permits and then the subsequent
9 issues of occupancy following the inspected build-up
10 of the basement. That private club status
11 continues, again only with respect to the basement
12 of the entire building. The rest of it is strictly
13 residential.

14 FATHER O'BRIEN: And then, if I might
15 continue, when the Capitol Hill Restoration Society
16 challenged -- I think that is the correct term --
17 our private club status because of lack of notice to
18 the community, we entered into an agreement with the
19 Capitol Hill Restoration Society after enormous
20 costs of legal bills to us, that we would cooperate
21 with the community in whatever way we could. That
22 is what brings us here today is a request for a
23 special exception. That was the agreement that was
24 struck between Capitol Hill Restoration Society and
25 Marquette University. And I believe I just saw the
26 letter Mr. Schauer is going to show you where now

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1 they withdraw that objection and support what we
2 have requested in terms of this special exception.

3 So I thought it would be all done today.
4 That we only had one party opposing us several years
5 ago and that we served the public notice. I went to
6 the ANC meetings, the ones that I was -- except for
7 the 6B meeting, which was held without my knowledge.
8 I arrived on June 8 for their meeting to find people
9 coming out of the hall saying, Father, forget it,
10 they canceled the meeting. And then 6B, which is
11 not the ANC in which 502 East Capitol is located --
12 that is ANC-6A -- I went to their meeting and have
13 gone to their meetings since 1998, and we have a
14 unanimous decision from our ANC, the ANC of
15 jurisdiction of 502 East Capitol. And then I was
16 shocked when Mr. Gottlieb Simon told me on a phone
17 conversation a) that they had a meeting, and b) that
18 they voted against us, and c) that I didn't have a
19 chance or Marquette University have a chance to
20 participate. I don't think you will find many
21 groups that are more neighborly conscious than we
22 are. And not to give us a chance to even express
23 our view -- and then if you noticed, even on that
24 letter -- and that is what got me suspicious of the
25 veracity of some of the things that I was told by
26 the representative of ANC-6B, that Northeast is even

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1 eliminated from the letter that is written to you,
2 as if to give the impression that ANC-6B has the
3 jurisdiction. Now I think an important question for
4 you to resolve is how can the ANC, where I go to to
5 represent the university and participate and share
6 in whatever questions they have, how can they vote
7 unanimously, the ANC of jurisdiction, which you, as
8 I understand it, are to give great weight to their
9 decision? The adjacent ANC holds a meeting without
10 our knowledge. We are the party that they are going
11 to make a determination of, and I am not able to
12 make any sort of presentation to them. And I asked
13 for the minutes of their meeting and they tell me
14 they are not available until September. I asked for
15 a resolution that was coming down to you, and well
16 it will be in the mail. And then I believe they
17 filed their resolution this Monday, July 19.

18 So I am asking you to expedite as
19 rapidly as you can this entirely long process that I
20 think the University, at enormous expense -- and I
21 am in a little bit of trouble with the University
22 President because no one at the University can
23 understand how this possibly could happen. And the
24 more we prolong this, the more expense obviously it
25 is going to cost the University. We will see it to
26 the end because we believe we are absolutely right.

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1 We are good neighbors and I can take the three of
2 you up and down East Capitol and introduce you to
3 the neighbors who are absolutely good friends, who
4 welcome the students, the program, the diversity
5 that comes into that neighborhood. A few squeaky
6 wheels all of a sudden get so much attention that I
7 think is disproportionate to the case we have before
8 you. That is all I have to say. I will be happy to
9 answer questions.

10 MR. COTTINGHAM: If I might before that
11 just a couple of things. I think you said them, but
12 just to make this clear. You are not proposing any
13 change in the current operation of the program if
14 this special exception is granted, correct?

15 FATHER O'BRIEN: Correct.

16 MS. KING: What are the hours during
17 which this club or school or whatever it is called
18 operates?

19 FATHER O'BRIEN: During the semesters,
20 we have classes on Tuesday afternoons and Thursday
21 afternoons. They are seminar experiential learning.

22 MS. KING: What time?

23 FATHER O'BRIEN: They are in the offices
24 3.5 days a week. We have seminars --

25 MS. KING: Tuesday and Thursday
26 afternoons what hours?

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1 FATHER O'BRIEN: 1:00 usually until
2 4:30.

3 MS. KING: And that is it?

4 FATHER O'BRIEN: That is it.

5 MS. KING: The rest of the --

6 FATHER O'BRIEN: That is in the basement
7 now. Visualize this building. I live in the
8 building with my excellent dog. And the basement is
9 all that is used for the seminars.

10 MS. KING: And it is just used for 3.5
11 hours twice a week and the rest of the time it is
12 vacant?

13 FATHER O'BRIEN: Nearly vacant.

14 MR. COTTINGHAM: You have a board of
15 visitors.

16 MS. KING: What else is it used for?

17 FATHER O'BRIEN: We have a board of
18 visitors that comes for meetings once a quarter and
19 we use it then. We have on occasion a reception for
20 the -- someone at the university. Like the Dean of
21 the School of Nursing had some of her alumni people
22 from the School of Nursing in the Greater Washington
23 area, about 14 or 15 people.

24 MR. COTTINGHAM: And your board of
25 visitors, if you might explain who those --

26 MS. KING: I am sorry, I can't hear you.

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1 MR. COTTINGHAM: I am sorry. If you
2 might explain who those board of visitors are.

3 FATHER O'BRIEN: Well, the board of
4 visitors are comprised of about I think 20-some
5 people of high political notoriety -- Senators and
6 several Congressmen, a number of people who have
7 helped contribute to the purchase of the building
8 and the activities of the University.

9 MR. COTTINGHAM: They are supporters of
10 the program essentially.

11 FATHER O'BRIEN: Right.

12 MR. COTTINGHAM: It is a support group
13 to the program.

14 CHAIRPERSON REID: Is that it?

15 FATHER O'BRIEN: If you have questions.

16 CHAIRPERSON REID: Do you have any
17 questions? All right, is there any cross
18 examination? Okay.

19 MS. PRUITT: He is not the affected ANC.

20 MS. BAILEY: He is not the ANC.

21 CHAIRPERSON REID: I am sorry, I thought
22 you were with the ANC.

23 MR. SIMON: No. Advisory Neighborhood
24 Commission 6B.

25 MS. PRUITT: But you are not the
26 affected ANC, so you are not granted party status.

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1 MR. SIMON: But given that we are on the
2 boundary lines, it is my understanding that old ANCs
3 have concurrent jurisdiction.

4 MS. PRUITT: No.

5 MR. SIMON: That is not correct?

6 MS. PRUITT: No. Sorry, Mr. Gottlieb,
7 no. And that is not how the Board has enforced that.
8 I mean, we had the same issue with Angola -- I mean,
9 New Guinea. So it is the affected ANC that is the
10 automatic party.

11 MR. SIMON: We received a --

12 MS. PRUITT: Yes. That is a courtesy
13 that our office extends.

14 MR. SIMON: Well, let me clarify that.

15 MS. KING: You can testify but you can't
16 cross examine.

17 MR. SIMON: Well, I understand what you
18 are saying, but I did have some cross examination.

19 CHAIRPERSON REID: Where is the affected
20 ANC?

21 MS. SCHMIDT: I am right here.

22 CHAIRPERSON REID: Okay. Then can you
23 give her your questions?

24 MR. SIMON: Yes, I can. But just for
25 clarification, is it my understanding that I needed
26 to have raised the question of party status for the

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1 ANC earlier in the process?

2 CHAIRPERSON REID: Well, my
3 understanding is that only the affected ANC.

4 MS. PRUITT: Yes. If he is requesting
5 party status for his ANC, yes, he would have had to
6 raise it earlier. Because it is not an automatic.
7 It is automatic for the --

8 CHAIRPERSON REID: Well, why can't he
9 raise it now?

10 MS. PRUITT: Well, I mean it is a
11 procedural issue.

12 CHAIRPERSON REID: Yes, I have no
13 problem with it. I mean, if that is all he has to
14 do and he didn't know he was supposed to do that, I
15 have no problem with it. Go ahead. Unless there
16 is an objection.

17 MR. HOOD: I am concerned of the
18 precedent we are setting here. I think very few of
19 that whole ANC process -- 6A and 6B -- one is in
20 favor. But anyway, I think the most affected -- the
21 ANC that is most affected should be the one. I
22 believe that is how we previously have done it.

23 CHAIRPERSON REID: Yes. Unless -- Ms.
24 Pruitt-Williams said unless the other ANC asked for
25 party status.

26 MS. KING: But Mr. Gottlieb says that

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1 the boundaries of his ANC are directly across the
2 street from this. I mean, in fact, Capitol Street
3 is, you know -- whichever Capitol Street it is,
4 east, north or south, would always be the boundary
5 of an ANC. So that there would always be one that
6 has --

7 CHAIRPERSON REID: Okay. But let's not
8 belabor this if it is okay.

9 MR. HOOD: Yes. That is what I am
10 saying. Let's move forward.

11 CHAIRPERSON REID: All right. Go ahead.

12 MS. PRUITT: And just for the record --
13 so I put on the record that you are granting party
14 status to 6B.

15 CHAIRPERSON REID: Yes.

16 MR. COTTINGHAM: If I may, the precedent
17 there would be --

18 CHAIRPERSON REID: It is not a
19 precedent. We just didn't do it earlier. He didn't
20 ask -- he didn't know to ask.

21 MR. COTTINGHAM: Not so much on that
22 question. But then wouldn't that say that every
23 time an ANC is adjacent that you are going to give
24 them party status?

25 MR. HOOD: This is a very unique
26 situation, I believe, Madam Chair. This normally --

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1 from my experience --

2 CHAIRPERSON REID: This is right across
3 the street. So the idea of being affected is
4 germane to both.

5 MR. COTTINGHAM: But whenever somebody
6 is on the -- I won't belabor the point. It has been
7 a long day. But --

8 CHAIRPERSON REID: If it is, then we
9 will take it up at that time.

10 MR. COTTINGHAM: Okay.

11 CHAIRPERSON REID: All right, Mr. Simon.

12 MR. SIMON: Thank you very much. Could
13 you please explain your understanding of what the
14 parking requirements are on this special exception?

15 MS. KING: There was no testimony on
16 parking.

17 MR. SIMON: All right. But parking is a
18 requirement.

19 MS. KING: Cross examination goes to the
20 testimony that was provided.

21 MS. PRUITT: You can do that in your
22 testimony, Mr. Gottlieb.

23 MS. KING: You can do that in your
24 testimony.

25 MR. SIMON: All right. I will limit
26 myself then to just a simpler point at this point.

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1 Father O'Brien, is your name on the application as
2 the person to be notified with regard to this
3 application?

4 FATHER O'BRIEN: I believe the
5 University representative's name would be on that.

6 MR. SIMON: Mr. Cottingham, is your name
7 on the application as the person to be notified?

8 MR. COTTINGHAM: I believe it is.

9 MR. SIMON: And were you ever notified
10 by me that there was an ANC-6B meeting and you were
11 invited to come?

12 MR. COTTINGHAM: Of a June 15 meeting,
13 no.

14 MR. SIMON: Mr. Cottingham, the question
15 was were you ever notified --

16 MS. KING: What was the answer to that
17 question, Mr. Cottingham? If you keep your hands in
18 front of your mouth and turn away, we can't hear
19 you.

20 MR. COTTINGHAM: I am sorry.

21 MR. SIMON: Were you ever notified by me
22 of an ANC-6B meeting and invited to come or send a
23 representative?

24 MR. COTTINGHAM: I don't recall.

25 MR. SIMON: If I were able to show you
26 my long distance telephone bill would that help you

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1 recall?

2 MR. COTTINGHAM: I know we obviously had
3 notice of the June 8 meeting because Father O'Brien
4 showed up to attend that meeting.

5 MR. SIMON: Father O'Brien, do you have
6 an assistant Richard Ficuda? I may be
7 mispronouncing his name.

8 FATHER O'BRIEN: No.

9 MR. SIMON: Do you have someone that
10 sounds like that?

11 FATHER O'BRIEN: We have an assistant
12 Tom Ficuda.

13 MR. SIMON: Ficuda. I apologize.

14 FATHER O'BRIEN: Yes. Who you say you
15 called who said you never called. You told me that
16 you left a voice mail and you did not. So continue.

17 MR. SIMON: I will be happy to continue
18 with your forbearance. Did you say -- is it your
19 testimony that Mr. Ficuda told you that I never
20 spoke to him?

21 FATHER O'BRIEN: No.

22 MR. SIMON: Did Mr. Ficuda ever tell you
23 of our several conversations?

24 FATHER O'BRIEN: I don't know what
25 several means. He told me he had talked to you.

26 MS. KING: Madam Chair, I don't recall

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1 any testimony in direct testimony about Mr. Ficuda.

2 CHAIRPERSON REID: Mr. Simon, please
3 keep your questions germane to the testimony here
4 today.

5 MR. SIMON: Yes. I was trying to relate
6 to the question of whether or not the University and
7 Father O'Brien had ever received any notification of
8 the ANC-6B meetings, whether or not he had ever had
9 an opportunity to come and whether he had been
10 deprived of an opportunity to come.

11 CHAIRPERSON REID: All right. Go ahead.

12 MR. SIMON: Did Mr. Ficuda tell you that
13 that our May meeting had been postponed or our
14 consideration of this item had been postponed
15 because of your unavailability?

16 FATHER O'BRIEN: Yes, we requested a
17 postponement.

18 MR. SIMON: All right. And did you
19 understand that when you came to the June 8 meeting
20 that the meeting was postponed -- that it had been
21 postponed because of a death -- the murder of ANC
22 Commissioner Dennis Golinger?

23 FATHER O'BRIEN: I understood later that
24 was the reason for the postponement. But if I might
25 add, I called your voice mail recording at 4:30 in
26 the afternoon and the meeting was still scheduled.

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1 There was no notification that it had been canceled.
2 I moved a number of other meetings aside so I could
3 attend your meeting, only to find out that it was
4 canceled. The point here is June 15, I was not
5 notified and Tom Ficuda was not called by you and
6 there was no message on the voice mail. We had no
7 ghost of a notion that that meeting took place. And
8 if you can deny that, you are dancing with the
9 truth.

10 MR. SIMON: I am not able to say that
11 you never received any efforts by me or anybody from
12 the ANC to tell you about our June 15 meeting. Let
13 me simply ask when did you next have occasion to ask
14 us when we would be considering the matter? You
15 came to a June 8 meeting and it was postponed. When
16 did you next have occasion to ask us when we would
17 be holding a meeting? Was it the next day? Was it
18 later that week?

19 FATHER O'BRIEN: I can't really recall.

20 MR. SIMON: Was it perhaps in July?

21 FATHER O'BRIEN: I can't recall.

22 MR. SIMON: Okay. Thank you.

23 CHAIRPERSON REID: Thank you very much,
24 Mr. Simon. Any other cross examination?

25 MS. SCHMIDT: Yes, I am Janet Schmidt. I
26 represent 6A. We had supported the application for

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1 Marquette for the variance as you know.

2 MS. KING: I can't hear you.

3 CHAIRPERSON REID: They supported the
4 application.

5 MS. SCHMIDT: We supported the
6 application. But I do have some questions that I
7 want to confirm with Father O'Brien -- certain
8 understandings that we arrived at at the last 6A
9 meeting. And I also would like to ask questions.
10 You raised the issue today that the basement is the
11 only part of the premises used. Is there a separate
12 entrance for the basement?

13 FATHER O'BRIEN: Yes.

14 MS. SCHMIDT: Thank you. You had
15 mentioned today that there are positive
16 relationships with the neighbors up and down East
17 Capitol Street and support in the neighborhood. I
18 was contacted today or in the last couple of days by
19 neighbors who have questions about conduct of
20 students, and you have placed this in issue by
21 mentioning that the students go to work in the
22 community. So I believe this is relevant. Could you
23 discuss if there have been any complaints about
24 students living in an apartment building on 4th and
25 East Capitol Street that have been directed to you?

26 CHAIRPERSON REID: Your question has to

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1 be germane to what was testified to during --

2 MS. SCHMIDT: He testified that the
3 students are involved in the community and there was
4 a positive view towards --

5 CHAIRPERSON REID: It has to refer to --

6 MS. SCHMIDT: That is right, but these
7 students visit the building.

8 CHAIRPERSON REID: But you can't ask
9 about that residence. That is not a part -- that is
10 not a dormitory of this particular application.

11 UNIDENTIFIED SPEAKER: Madam Chair, the
12 only --

13 MS. PRUITT: Excuse me, ma'am. You can't
14 speak from the audience. This is her opportunity to
15 cross examine. You will have that opportunity to do
16 that.

17 MS. KING: There is still the
18 opportunity for testimony. This is cross
19 examination on the basis of anything that they have
20 testified to. But you can enter -- anybody can
21 enter additional information into the record when
22 they are testifying. But cross examination is not a
23 time to enter new material into the record.

24 MS. SCHMIDT: Is this the only premises
25 used by Marquette University with respect to the
26 operation of a Les Aspin Center? The one at 502 East

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1 Capitol Street?

2 MR. COTTINGHAM: Isn't that going after
3 the same question?

4 CHAIRPERSON REID: With respect to the
5 what?

6 MS. SCHMIDT: The operation of the Les
7 Aspin Center. The Les Aspin Center -- Marquette
8 University.

9 CHAIRPERSON REID: Right.

10 MR. HARRISON: Is this the only premises
11 used to conduct classes and office operations?

12 FATHER O'BRIEN: Yes.

13 MS. SCHMIDT: And at the ANC meeting on
14 July 7, I asked you if all the students lived in the
15 house, and I will tell you as I have told everyone,
16 I have hearing loss. Was your answer to that
17 question yes or no?

18 FATHER O'BRIEN: Do all of the students
19 live in the 502 East Capitol residence?

20 MS. SCHMIDT: Yes.

21 FATHER O'BRIEN: None of them do.

22 MS. SCHMIDT: No students live there.
23 Who resides in that building?

24 FATHER O'BRIEN: I do.

25 MS. SCHMIDT: Just yourself and the dog?

26 FATHER O'BRIEN: Yes.

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1 MS. SCHMIDT: Do visitors come and stay
2 in the residential part of the house?

3 FATHER O'BRIEN: Rarely, but yes. My
4 guests do.

5 MS. SCHMIDT: Like, for example, a
6 letter was distributed to the ANC about visitors
7 from Africa. Now will they stay on the premises?

8 FATHER O'BRIEN: No.

9 MS. SCHMIDT: All right. All I want to
10 do now is just go through our understandings if that
11 is possible. Father O'Brien agreed to certain
12 conditions that --

13 MS. PRUITT: Excuse me, ma'am. This is
14 only questions. That can be handled --

15 MS. KING: That is for your testimony.

16 MS. SCHMIDT: Okay.

17 MS. PRUITT: That can be handled in your
18 testimony, okay?

19 MS. SCHMIDT: All right. Do you
20 maintain a close relationship with the students and
21 oversee their conduct when they are on the premises
22 and in the neighborhood?

23 FATHER O'BRIEN: I am the director and I
24 am their professor.

25 MS. SCHMIDT: That is the answer.

26 FATHER O'BRIEN: And I am a priest.

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1 MS. SCHMIDT: Thank you very much.

2 CHAIRPERSON REID: Okay. Now thank you
3 very much. If you have nothing else -- no more
4 questions from Board members, we will move now to
5 the Government reports and ANC reports.

6 MR. COTTINGHAM: Do we have an
7 opportunity here to supplement?

8 CHAIRPERSON REID: You will have an
9 opportunity to come back and have closing remarks.

10 MS. KING: And also to cross examine any
11 other witness.

12 MS. PRUITT: Unless you want to add
13 something at this point.

14 MR. COTTINGHAM: Well, that is what I
15 guess I am asking you.

16 CHAIRPERSON REID: Go ahead.

17 MR. COTTINGHAM: Obviously traffic or
18 parking rather is going to come up, so we should
19 address that.

20 FATHER O'BRIEN: Our students are not
21 allowed to have cars. That is an issue that I think
22 several letters -- when I examined the BZA file to
23 see what neighbors were saying, and I called several
24 of the people who had written in -- one was
25 complaining about the Michigan license plates and
26 that we should build our school in Michigan. Well,

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1 Marquette is not located in Michigan. It is
2 Wisconsin. And another lady was concerned about
3 parking. We do not allow students to have cars. So
4 we take no parking spots. I park in the garage, so
5 I don't use a parking spot. The assistant that
6 works at the center, the staff person, parks behind
7 me so I can't get out of the garage when I want. So
8 we use no parking whatsoever.

9 CHAIRPERSON REID: But nonetheless, you
10 under the provisions of Section 206.3, you are
11 supposed to provide parking.

12 MS. KING: One parking space.

13 CHAIRPERSON REID: And you do.

14 FATHER O'BRIEN: Yes.

15 CHAIRPERSON REID: Okay. And the only
16 other thing is that in regard to adverse impact to
17 your knowledge, is the school located in such a way
18 that it does not cause any objectionable problems to
19 the adjoining neighbors in regards to traffic and
20 number of students or otherwise?

21 FATHER O'BRIEN: Oh, absolutely not.
22 Right across from us is Jimmy T's, a restaurant.
23 There is a bed and breakfast two doors from us.
24 There is a grocery store right across the street
25 from us. East Capitol is a main bus route. There
26 is lots of activity there. One of the reasons we

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1 wanted to be there was to be in an urban setting
2 because our university is committed to urban life.
3 We are in downtown Milwaukee, and that is why we
4 selected that place, as well as the proximity to the
5 Capitol for our students doing their internships.
6 So we enjoy the vibrancy of diversity and living in
7 an urban environment. And I hope others would feel
8 the same.

9 CHAIRPERSON REID: Okay. Well, thank
10 you very much. Now you can sit back and we will
11 have the ANC come up. We have already gotten their
12 reports, right?

13 MS. KING: Not that I am aware of, no.

14 MS. SCHMIDT: I think you all know I am
15 Janet Schmidt. I am with 6A-05. I represent the
16 interests of my constituents living in the zone
17 where the Les Aspin Center is operated. As you know
18 from our July 14 letter to the Board, the 6A
19 Commission supports the special exception requested
20 by Marquette, if an only if certain conditions which
21 Father O'Brien agreed to in the July 7 meeting of
22 6A.

23 And those conditions are that the
24 University limits the enrollment to 20 students in
25 this program, which is exactly what the special
26 exception asks for. That the Les Aspin students or

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1 the Marquette students attending the Les Aspin
2 Center as a condition of enrollment are not
3 permitted to bring their cars to Washington. In
4 addition, that no officials or individuals related
5 to Marquette University will assist any student in
6 obtaining a zone 6 residential permit or temporary
7 visitor parking which would take up space. As you
8 may know, to get student parking in the District,
9 you merely need a letter from the school you are
10 attending stating that you are a full-time student
11 and you need to pay a fee. So we have asked and
12 Father O'Brien agreed that they would not assist
13 students in obtaining such permits. We have also
14 requested and Father O'Brien at our meeting agreed
15 to the condition that the Les Aspin Center of
16 Marquette University is not used for functions other
17 than official Marquette University events. And we
18 had some discussion about what that would mean. The
19 interpretation was that Marquette University events
20 are ones that the University does not obtain
21 unrelated business taxable income or income from.
22 There is no rental. We also asked that the
23 premises, and Dr. Father O'Brien agreed to this,
24 surrounding the footprint of the building will not
25 be used for garden parties of either students or
26 attendees. We are aware, however, that Father

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1 O'Brien barbecues in the backyard. We have no
2 problem with that kind of incidental use. Please
3 note in our letter there is a typo. We said the
4 grounds surrounding the premises will not exceed 20
5 students, but we ask that they not be used for
6 Marquette functions other than incidental ingress
7 and egress to the property, which obviously would be
8 necessary for any kind of function.

9 Since we took this position, I have had
10 calls complaining about students residing at an
11 apartment at 4th and East Capitol. I have no
12 knowledge of this myself. But I would ask Father
13 O'Brien, and I tried to get to this in cross
14 examination, that if in fact that is the case, that
15 he would take great effort to try and control the
16 situation if such a situation does in fact exist.
17 Because he has stated at prior ANC meetings that he
18 is closely involved with this students, and I would
19 ask as a graduate of the University of Wisconsin who
20 lived in a sorority house that perhaps such rules as
21 house rules might be enforced and that he would take
22 that to heart and take into account any concerns of
23 the neighbors. And I would think that he would be
24 more than willing to abide by that or try to assist
25 or allay any concerns of the neighbors.

26 CHAIRPERSON REID: He is shaking his

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1 head. Okay. Thank you. Mr. Simon?

2 MR. SIMON: Thank you very much. As you
3 know from the July 14, 1999 letter from Chairperson
4 Walden, ANC-6B voted 8 to 0 to oppose this
5 application. This is an application for a special
6 exception in a residential zone. I would have asked
7 the Marquette representatives a moment ago if I had
8 been able to do, why this was a special exception
9 that they were requesting. I heard no testimony to
10 indicate that this was special -- that there was a
11 problem or that there was an issue or that there was
12 something that required them to have special. I
13 heard what I refer to as a 4C exception. This
14 exception is comfortable. It is convenient for the
15 University. But it is corrupting and it is
16 corrosive. It is corrosive of the residential
17 neighborhood and it is corrupting of the zoning
18 code. It is not in any way that has been
19 demonstrated here today something special. And the
20 Commission -- excuse me, the Board is not required
21 to grant a special exception simply because it
22 facilitates or helps a program. This is not the
23 only location that this program can be at. Mr.
24 Scanlan, who was here earlier, received some
25 assistance from the Board a few months ago for a
26 building on 8th Street across from Eastern Market.

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1 It is going to have offices there. That would be
2 fine. I am familiar also with Waterside Mall. It
3 sits right on top of the subway station. They have
4 plenty of space. I don't know if Marquette
5 University has asked them about it. Link and Learn
6 is sitting right up in the top of that. That is an
7 educational activity.

8 The point is without my trying to
9 inventory all the alternate spots in the city is
10 that there was absolutely no case made here today
11 why this location -- this residential location --
12 other than the convenience and the comfort to the
13 applicant, requires a special exception to the
14 residential zone in which it was located. This was
15 not a surprise when Marquette took over this
16 location. This was an R-4 then. It is still an R-4
17 now. There are many opportunities in the city to
18 put a school, if that is in fact what we are talking
19 about here. And I mention it that way just to --
20 for Mr. Hood's benefit. I raised a question as a
21 preliminary matter as to whether 206, the school
22 exception, was the correct one, or 210, the
23 university and college exception was the special
24 one. We have gone forward today at the Board's
25 request, and so we are talking within that context.
26 But we still raise an objection with regard to which

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1 section it is in.

2 CHAIRPERSON REID: Mr. Simon, you said
3 that you did submit a letter. I don't have it. I
4 have the 6A letter. I don't have your -- the 6B
5 letter. I don't have that.

6 MR. SIMON: I have another copy. I saw
7 that --

8 MS. KING: Here it is.

9 MR. SIMON: Ms. King has a copy of that.
10 Does anyone else need a copy?

11 MR. COTTINGHAM: This is the one that --

12 MR. SIMON: Yes, that is the copy --
13 that is the letter. Just by way of some other
14 background, there was an allusion made before about
15 the fact that this was a club. In our letter it
16 talks about the Commission is concerned about the
17 loss of residential housing on a residential street
18 in a residential neighborhood. Marquette originally
19 applied to do this as a club. It is my
20 understanding that the reason that that use or that
21 particular mechanism didn't go forward wasn't simply
22 that there was a question of notice. Father O'Brien
23 didn't get into the question of whether or not that
24 use in fact met the statutory requirements of
25 avocational use versus vocational use. And that is,
26 I think, detailed in the hearing on the appeal that

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1 you have available to you. So I won't go into that
2 now. But it was more than simply a question of
3 whether or not there was a notice requirement. It
4 is whether or not they really met the requirements.

5 The Commission is concerned that a
6 school use located in the basement may not always
7 stay in the basement. That there will be an
8 irresistible attraction to using the rest of the
9 facility. And after all, who is going to be there to
10 monitor whether or not something happens on the
11 first floor or the second floor or whatever.

12 There are other locations. There are
13 other places where this educational activity can go
14 on. No case is made why it needs to be there except
15 that it is convenient or it is comfortable. But it
16 is corrupting and it is corrosive. We want to
17 maintain and protect residential housing stock.
18 Simply no case has been made not to keep it
19 residential.

20 On the notice requirements for today,
21 some of us had notice, but other people didn't. And
22 that was the issue that we wanted to present. I
23 just mention that again so that it is part of our
24 testimony. Thank you very much for your attention.

25 CHAIRPERSON REID: Thank you very much.
26 Do you have any cross examination of these two

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1 witnesses?

2 MR. COTTINGHAM: I do of Mr. Simon. A
3 couple of things. I understand that there were
4 exceptional circumstances that caused you to cancel
5 your June 8 meeting. Have you given the Board or us
6 any written notice of the rescheduled June -- have
7 you submitted as evidence any written document
8 notifying people of the rescheduled meeting?

9 MR. SIMON: I have not.

10 MR. COTTINGHAM: How did you notify
11 people of the rescheduled meeting?

12 MR. SIMON: People were notified by
13 phone calls for all those people that we were
14 expecting to be there. And it was my belief that a
15 phone call was made to Marquette. Apparently it was
16 not received. We also put the information out on an
17 e-mail list, and it is my belief -- but I don't know
18 for a certainty on this particular case -- but it is
19 my belief that in addition to that, we put two
20 notices on lamp posts in every single member
21 district.

22 MR. COTTINGHAM: But you acknowledge
23 that 502 East Capitol would not be in one of those
24 districts?

25 MR. SIMON: Absolutely.

26 MR. COTTINGHAM: Okay. You talked about

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1 the residential nature of --

2 MR. SIMON: Of East Capitol Street, that
3 is correct.

4 MR. COTTINGHAM: You are familiar with
5 that area?

6 MR. SIMON: Yes.

7 MR. COTTINGHAM: You are familiar with
8 the 400 and 500 blocks of East Capitol, of which 502
9 East Capitol is part of.

10 MR. SIMON: Right.

11 MR. COTTINGHAM: Are you familiar with
12 two grocery stores in those blocks?

13 MR. SIMON: I am familiar with the
14 Congress Deli. I am not sure I am familiar with the
15 other one.

16 MR. SIMON: Are you familiar that there
17 is a laundry in those blocks?

18 MR. SIMON: Yes.

19 MR. COTTINGHAM: A chiropractic center?

20 MR. SIMON: I am not familiar with the
21 chiropractic center.

22 MR. COTTINGHAM: The Irish National
23 Caucus, which is in your district?

24 MR. SIMON: The Irish National Caucus is
25 on the 400 block of East Capitol on the south side.

26 MR. COTTINGHAM: The Society of Women

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1 Geographic -- Geography --

2 MS. KING: Geographers.

3 MR. COTTINGHAM: I said the 400 and 500
4 block of East Capitol.

5 MR. SIMON: If your point that there are
6 other or some non-residential uses on the block, I
7 will stipulate that that is true.

8 MR. COTTINGHAM: So you would stipulate
9 to the pediatric center, the restaurant, the two bed
10 and breakfasts all in those two blocks?

11 MR. SIMON: I am stipulating that there
12 are other non-residential uses.

13 MR. COTTINGHAM: Okay.

14 MR. SIMON: And that the special
15 exception use -- and I am not sure which of those
16 uses, by the way, were grandfathered in or existing
17 before and whether or not any of them have had to
18 come forward.

19 MR. COTTINGHAM: I am not asking you
20 that. I am simply --

21 MR. SIMON: I understand.

22 MR. COTTINGHAM: I am asking you about
23 your testimony about the overwhelming residential
24 nature of that neighborhood or street.

25 MR. SIMON: Well, my testimony was that
26 it was a residential zone. That is correct.

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1 MR. COTTINGHAM: Just one more question.
2 You talked a little bit about the certificate of
3 occupancy as a private club. Are you aware that in
4 fact that certificate of occupancy is still in
5 effect?

6 MR. SIMON: I am aware that -- yes, I
7 am.

8 MR. COTTINGHAM: Did you today receive a
9 copy of a letter that I submitted to the Chair
10 detailing the history of obtaining that certificate?

11 MR. SIMON: I am aware of a lot about
12 the history --

13 MR. COTTINGHAM: Did you receive a copy
14 of the letter that I gave to the chair?

15 MR. SIMON: Yes, I did.

16 MR. COTTINGHAM: Thank you. So you saw
17 in that letter that that certificate -- the
18 occupancy certificate was granted in 1996.

19 MR. SIMON: I believe that that is what
20 the letter says.

21 MR. COTTINGHAM: And before today and
22 before your June 15 meeting, has ANC-6B filed
23 anything with the Board of Zoning Adjustment or any
24 other government authority complaining about the
25 presence of 502 East Capitol?

26 MR. SIMON: We complained about the

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1 granting of the certificate of occupancy.

2 MR. COTTINGHAM: Have you filed
3 anything? Has your organization filed any --

4 MR. SIMON: If you will give me a
5 second just to check my file. Well, let's see, on
6 January 27, 1997, we filed a resolution with regard
7 to the certificate of occupancy for the Les Aspin
8 Center for Government and that was filed with the
9 BZA on January 27. And the state stamp says it was
10 204.

11 MR. COTTINGHAM: Thank you. That is
12 all.

13 CHAIRPERSON REID: All right. Thank
14 you.

15 MS. SCHMIDT: May I have an opportunity
16 to comment in light of what 6B has testified to?

17 CHAIRPERSON REID: Not usually. But can
18 you state a good reason?

19 MS. SCHMIDT: I just think that maybe I
20 can allay some of their concerns here. I think 6B
21 is concerned about -- and I hope I am not speaking
22 out of turn here -- but --

23 CHAIRPERSON REID: You speak to us.

24 MS. SCHMIDT: I think 6B is concerned
25 with respect to properties starting to look
26 commercial, and I would assume Father O'Brien -- as

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1 they have not put up commercial signs saying Les
2 Aspin Center at this time, that they probably do not
3 put signs up on the property in the future.

4 FATHER O'BRIEN: Right. And it is my
5 residence. It is residential.

6 MS. SCHMIDT: Yes. And that is
7 something that 6A took into consideration, is that
8 it does lend -- unless somebody told you it was the
9 Les Aspin Center, you probably would not know. I
10 had a couple of other calls which I am sure are no
11 brainers to agree to. Some people were concerned
12 that parties would exceed fire code limits. I would
13 assume that you would agree not to have parties that
14 exceed fire code limits in the house. And there was
15 some concern about tour buses parked, but you had
16 assured us at the 6A meeting that we would not have
17 a problem with tour buses being parked on East
18 Capitol Street as that is a violation of the law
19 anyway. So I would think you would have no problem
20 agreeing to that, which would allay some of the
21 concerns of citizens.

22 And I finally wanted to comment on
23 something that you said here. When we considered
24 this at 6A, I was aware that there would probably be
25 some other incidental use other than the basement.
26 Father O'Brien lives in the house. Students convene

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1 in the kitchen and have breakfast together. I
2 didn't feel that was a major impact and I don't
3 think the other commissioners did either. And we
4 also felt that supporting the certificate of
5 occupancy would actually give 6A an opportunity to
6 limit the impact of the Les Aspin Center on the
7 residential neighborhood. Because with the present
8 certificate of occupancy being private club status,
9 we were not able to limit the growth of it in any
10 way. And here these variance is for 20 students,
11 and we support that because it will limit the impact
12 on the neighborhood and they can only have the
13 certificate of occupancy if it doesn't exceed 20
14 students. They would have to come and revisit us if
15 they wanted to grow. So we felt there were actually
16 better safeguards by supporting this than there
17 would be by opposing it. Thank you.

18 CHAIRPERSON REID: Thank you.

19 MR. SIMON: Madam Chair, just one quick
20 follow-up. And that is with regard to what the ANC-
21 6B's concerns were, in the letter that you received,
22 you will see that the Commission wishes to protect
23 and preserve the residential character and actual
24 residential use. So it isn't simply a matter of
25 appearance that 6B is speaking to. It is a matter
26 of whether or not buildings are used and available

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1 for residential use, not simply how the outside
2 facade.

3 CHAIRPERSON REID: Thank you.

4 MR. HOOD: Mr. Gottlieb, in an R-4 zone,
5 it can be permitted upon the Board's approval. I
6 guess you are aware of that. So it is not that it is
7 prohibited. It can be permitted.

8 MR. SIMON: No, no. Exactly. It is
9 permitted where it doesn't have any of the negative
10 influences or impacts upon the neighborhood that are
11 listed. The traffic won't be a problem or the
12 parking won't be a problem or that the number of
13 students won't be a problem. And any other use such
14 as whether or not the facility becomes used for
15 entertainment or whatever might be going on. But
16 that is a special exception granted. And I am
17 assuming -- my understanding and maybe I don't have
18 a good enough understanding -- is it is not there to
19 be used willy nilly. It is to provide the Board
20 with some discretion. With the ability to shoot --
21 with the ability to cut the rough edges off of the
22 zoning when they don't fit quite right. But this
23 isn't one of those strange, unique, bizarre,
24 difficult, special situations. It is just an
25 ordinary situation. And the problem is how much
26 Swiss cheese does the zoning code come to be. When

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1 every person says, well gee, it would be nice if I
2 could use my basement for some other purpose other
3 than a residence. And if the city were hard-pressed
4 to find office or educational uses someplace else,
5 we would have to look at that. But we have a city
6 where there are lots of spaces. Spaces that are
7 convenient to federal agencies, spaces that are
8 convenient to the Metro.

9 MR. HOOD: Okay.

10 MR. SIMON: That is the point.

11 MR. HOOD: All right. Thank you.

12 CHAIRPERSON REID: Okay.

13 MR. COTTINGHAM: May I follow up on that
14 point?

15 CHAIRPERSON REID: I am sorry?

16 MR. COTTINGHAM: May I follow up on that
17 last point just for one second?

18 CHAIRPERSON REID: Comment or cross?

19 MR. COTTINGHAM: Cross.

20 CHAIRPERSON REID: Okay. Very quickly,
21 please.

22 MR. COTTINGHAM: We had a earlier
23 conversation today about whether it should be under
24 206 or 210. So you acknowledge that both of those
25 sections at least contemplate the possibility of
26 schools and universities being in residentially

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1 zoned neighborhoods. So it is not --

2 MR. SIMON: Yes. A special exception
3 for both schools and for universities and colleges.

4 MR. COTTINGHAM: Right. So the code
5 contemplates that that is permissible under the
6 right circumstances.

7 MR. SIMON: The argument isn't whether
8 it is possible. It is whether or not it is
9 necessary.

10 CHAIRPERSON REID: Okay. All right,
11 thank you. Now persons and parties in --

12 MS. PRUITT: Excuse me, Madam Chair.
13 For the record, we have a letter from councilman
14 member Ambrose, I believe.

15 CHAIRPERSON REID: Well, I haven't
16 gotten to that yet.

17 MS. PRUITT: Oh. I thought you were
18 doing government reports.

19 CHAIRPERSON REID: No, I did government
20 reports earlier. But that was not in my opinion a
21 government report. That was a letter in opposition.

22 MS. PRUITT: Okay.

23 CHAIRPERSON REID: All right. Persons
24 and parties in support of the application -- in
25 support -- persons or parties in support of the
26 application.

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1 MS. KING: Other than the ANC.

2 CHAIRPERSON REID: Then when we get to
3 the persons and parties in opposition, someone can
4 read Council Member Ambrose's letter or just give
5 the salient points of it. Okay, Mr. Schauer?

6 MR. SCHAUER: Madam Chairperson and
7 members of the Board, my name is Lyle S C H A U E R.
8 I reside at 1107 Independence Avenue, S.E. I am the
9 zoning chair of the Capitol Hill Restoration
10 Society, and our offices are at 420 10th Street,
11 S.E. I have a written report in the form of a
12 letter which I would like to present to you. And if
13 I might, Madam Chairperson, I would just like to
14 summarize it. Many of the facts that are in this,
15 even these short two pages, have already been
16 introduced. Mr. Cottingham's letter gives some of
17 the factual background. I don't intend to go over
18 that except to mention that in February of 1997, the
19 Society appealed -- that is, the Restoration Society
20 -- appealed a decision of the zoning administrator
21 to issue a private club C of O for the basement at
22 502 East Capitol. We objected to that really on two
23 grounds. One, we felt that the matter of right non-
24 residential uses in R-4 zones should be strictly
25 interpreted. And when we looked at the definition
26 of the private club, we found that it was restricted

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1 to avocational activities only. And we objected
2 strongly to the fact that it was being used in our
3 view for vocational activities. As a result, we
4 filed the appeal from the zoning administrator's
5 decision because we felt she had misinterpreted the
6 definition.

7 But our second point was that we wanted
8 a public process. And the granting of a matter of
9 right use as a private club does not involve a
10 public process. There is no notice given to anyone.
11 The zoning administrator, if she feels the matter
12 meets the test of the definition, grants the C of O,
13 and no notice is given to anyone.

14 Before the case came to hearing before
15 this Board, Marquette and our Society reached an
16 agreement that they would apply for a special
17 exception as a private school, and that is the
18 matter that is now before the Board. If an order
19 for a special exception is granted as a private
20 school with conditions that are acceptable to
21 Marquette and the neighbors, Marquette under the
22 agreement will then apply for a C of O for a private
23 school and ask that the present C of O as a private
24 club be rescinded. If, however, you decide not to
25 grant the special exception or that it would be
26 subject to conditions that are unacceptable to

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1 Marquette, then the say of the appeal that we and
2 Marquette had agreed to would be lifted and the
3 appeal would continue. Now I don't mean that as a
4 threat to the Board to bring this revived appeal
5 back to you. But that is the situation where it
6 stands. The agreement provides that the Society
7 will not propose in its own right any conditions to
8 be placed on the final order, nor will it support
9 any conditions that neighbors, other community
10 groups or the ANCs may propose. On the other hand,
11 the Society is not required to oppose any conditions
12 proposed by others.

13 Could I just say a few words of my own
14 on this case beyond this statement? I am reminded
15 of the blind men and the elephant. You all know the
16 story of the blind men and the elephant. Depending
17 on which part of the elephant a blind man fetched up
18 on, he declared it was either a wall or a rope or a
19 snake or whatever. And I really think that we can't
20 look at just this one house in this case. I think
21 there are community issues here. And I think this
22 is something that we have to work out. I would hate
23 to be in your position because it is a no win
24 situation for you. You cannot meet the needs of the
25 neighbors and of Marquette at the same time. So if
26 it is at all possible, we want to try to work out an

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1 arrangement so that Marquette can live there. After
2 all, they established themselves as a result of a
3 decision by the City Administrator, the Zoning
4 Administrator, and in good faith they entered into
5 that house. We don't really feel comfortable with
6 trying to remove them. But we would like to see a
7 better arrangement worked out so we aren't stuck
8 with these narrow little legalities of what they do
9 somewhere else isn't germane to this case. It may
10 not in fact be germane, but it is very important to
11 the community. So we've got to work these things
12 out. Best do it among ourselves, I think. And I
13 don't give up hope of doing that. I am sorry, I
14 shouldn't have gone on. But I really feel that is
15 the situation that we find ourselves in.

16 CHAIRPERSON REID: So, Mr. Schauer,
17 basically you would like to see some type of meeting
18 of the minds with the ANC and the neighborhood and
19 Marquette, whereby there is a special exception
20 granted and that there are conditions -- mitigating
21 conditions that the community can live with and at
22 the same time allow Marquette to be able to operate?
23 That is the objective?

24 MR. SCHAUER: That is the first step.
25 But I think we as a community have to take the next
26 step, and that is to try to work something out.

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1 Because tempers are getting a little high. It is
2 not good for our community. I mean a little bit of
3 that is fine. It keeps the juices flowing. But
4 this is getting a little bit out of hand.

5 CHAIRPERSON REID: Well, I think that
6 this is not unlike what is typically the case when
7 we have applications before us that have some
8 opposition and tempers start to flare nonetheless.
9 But when people kind of get a grip on the emotions
10 and start looking at how they can work together to
11 live together and work out compromises, then usually
12 typically we have seen that things work out most
13 positively in the end. And I think that I am -- I
14 don't know yet until we hear the opposition, but I
15 am hearing some give and take on both parts. I have
16 not -- Marquette seems to be very amenable to trying
17 to work out what is being asked as far as conditions
18 are concerned and I am hearing some give and take on
19 the community. So we will see. But hopefully we
20 will get some resolution, some positive resolution,
21 particularly with the inclusion of the conditions to
22 mitigate the negative impact, if there is any
23 negative impact or to ensure that there would not be
24 any negative impact.

25 MR. SCHAUER: Thank you, Madam
26 Chairperson. I certainly hope that happens.

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1 CHAIRPERSON REID: Thank you. Did you
2 wish to cross examine?

3 MR. COTTINGHAM: Actually just following
4 up on that topic with one question for Mr. Schauer,
5 who I finally get to meet after talking to about
6 four years on the phone. You mentioned a settlement
7 agreement.

8 MR. SCHAUER: Yes.

9 MR. COTTINGHAM: And one condition in
10 that agreement. There is a declaration of restricted
11 covenant. Could you describe -- if this special
12 exception -- it is contingent -- Marquette will sign
13 that if the special exception -- you talked about if
14 the special exception is approved with appropriate
15 conditions that were acceptable, then we will sign
16 this covenant. If you could just describe that to
17 the Board?

18 MR. SCHAUER: I would be glad to. I had
19 hoped, Steve, that you would cover that in your
20 presentation and I wouldn't have to get into this
21 legal stuff. But if the settlement agreement is
22 carried out, that is, a special exception is granted
23 and Marquette gets its new C of O and asks the
24 zoning administrator to revoke the old one, then
25 Marquette further agreed to place a covenant on the
26 property at 502 that prevents them from buying any

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1 other property for the next 10 years on Capitol
2 Hill. Basically that is what it provides.

3 CHAIRPERSON REID: They agreed to that?

4 MR. SCHAUER: Yes. And they will
5 execute this once those conditions are complied
6 with, that is, that they get their C of O for a
7 private school.

8 CHAIRPERSON REID: Okay.

9 MR. COTTINGHAM: And we have provided a
10 copy of that to 6A. I assume, Lyle, you would have
11 no objection if we also provide a copy to the Board.

12 MR. SCHAUER: Not at all. I assumed it
13 would be provided to the Board.

14 CHAIRPERSON REID: For the record, it
15 would be great to have it. We don't know anything
16 about that.

17 MS. SCHMIDT: 6A did not have a copy of
18 that either.

19 CHAIRPERSON REID: 6A and 6B as well.
20 ANC 6A and 6B, you should provide them with copies.
21 Okay, are you done, Mr. Schauer?

22 MR. SCHAUER: I am done if there are no
23 more questions.

24 MS. KING: No more questions. Nice to
25 see you. Thank you for waiting so late.

26 CHAIRPERSON REID: Those parties in

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1 opposition please come forward -- persons in
2 opposition please come forward. Okay. And I would
3 ask that given the lateness of the hour that you try
4 to contain your testimonies to no more than 3
5 minutes and not be redundant. If one person has
6 already aired your particular issue, that should not
7 be repeated unless you continue your testimony
8 without being redundant. All right. Who wants to
9 go first?

10 MS. NEAL: I will be glad to. I am Jean
11 Marie Neal. I live at 621 A Street, N.E., which is
12 two blocks from the location of 502 East Capitol. I
13 thank you very much for allowing me to testify. As
14 I said earlier, this is my first time testifying. I
15 am a 20-year resident of Capitol Hill. My husband
16 and I very much care about the community. We are
17 very involved. I was just appointed by Council
18 Member Ambrose to be her delegate representative on
19 the Eastern Market Citizens Advisory Committee, and
20 I can't say I am looking forward to it.

21 MS. KING: It will be worse than
22 everything wicked you've ever done in your life.

23 MS. NEAL: I know. I just attended my
24 first meeting. But I think as residents and as
25 citizens, we have to do that. And we believe very,
26 very strongly in that. I am here today because I do

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1 care about the community. Real estate in Capitol
2 Hill, as in other areas of the District is booming.
3 That is good. We love it. But one of the negatives
4 that happens is that Capitol Hill is being
5 threatened by lobbying firms, various non-profit
6 groups, and in this case a university, who try to
7 buy or do buy residential homes and turn them into
8 businesses.

9 I consider myself a pro-business
10 Democrat, and I want a thriving business
11 environment. But everything, as Mr. Gottlieb said,
12 has its place. There is a lot of commercially zoned
13 rental and purchase property in the District and on
14 Capitol Hill. There is no need for business
15 intrusion on what is now residential. I have to
16 tell you, I am tired of those who use our community
17 for their own purposes without regard to the fact
18 that we are a community, just like any other
19 community in this country. You know, we don't have
20 voting rights in the District, but we still can try
21 to hold onto some rights as homeowners. And for
22 some reason, people seem to treat the District of
23 Columbia differently in everything that is done.

24 I think the next decade is going to be a
25 period of rebirth for the city, I hope. And I think
26 as members of this Board, you are going to have

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1 tremendous, tremendous responsibility and power to
2 help shape that rebirth. The decisions you make on
3 matters like the one before you today will literally
4 determine the day-to-day living environment of those
5 of us who live here. I don't go back to Milwaukee
6 as this attorney does. I live on Capitol Hill. I
7 have no other home and no other place to go, and I
8 have for 20 years.

9 I strongly oppose the granting of this
10 special exception to the Les Aspin Center. And I am
11 actually in a way -- this is very difficult because
12 of Father O'Brien and they are a wonderful school,
13 et cetera. But the picture you have been painted
14 today is just not very accurate, and I am very sorry
15 to have to say that. There are a couple of
16 commercial properties in the 500 block of East
17 Capitol. They described to you the 400 block. If
18 you look coming up from the Capitol down East
19 Capitol, 200 has gotten very commercial. 300 has
20 gotten commercial. 400 is pretty commercial, but
21 almost all of that has been there a long time. The
22 500 block we have managed to keep residential. Jimmy
23 T's restaurant has been there a long time and it is
24 a great place. There is a bed and breakfast. I am
25 not quite sure how that happened. But we can't undo
26 the mistakes of the past. But I hope we can surely

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1 prevail on you to prevent more mistakes, more
2 intrusion today and in the future. We are not here
3 to debate a dry cleaner or a grocery store in the
4 400 block. That is not why we are here.

5 If we take the 500 block, then the 600
6 block is next, and so forth and so forth. Capitol
7 Hill is very convenient. Mr. Gottlieb got that
8 perfect. It is comfortable and it is convenient and
9 it is an easy target for commercial ventures, and
10 that is what is happening. This is far, far broader
11 in our community than this one house. If they are
12 allowed to continue to operate, it is going to send
13 a strong message that is heard across on Capitol
14 Hill. And it is going to have a very chilling,
15 negative effect on residential real estate. So if
16 you care about residential real estate, that is all
17 this decision is about. That is the whole issue.

18 CHAIRPERSON REID: You have one minute.

19 MS. NEAL: All right. Can I ask you for
20 more time? I am here on behalf of a lot of people.
21 I stayed up until midnight working on this last
22 night. Is it --

23 CHAIRPERSON REID: Well, the fact of the
24 matter is --

25 MS. NEAL: Is it too much to ask to hear
26 from a resident?

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1 CHAIRPERSON REID: The fact of the
2 matter is that in your --

3 MS. NEAL: I have some important
4 information.

5 CHAIRPERSON REID: In your preface, you
6 went into some other kinds of issues. And what you
7 need to do is specifically stay on point.

8 MS. NEAL: I will try to do that.

9 CHAIRPERSON REID: And what is germane
10 to this particular case.

11 MS. NEAL: I will try to do that. But I
12 hate to go back to my neighborhood today and say, I
13 was cut short because you couldn't hear me.

14 CHAIRPERSON REID: But in your preface,
15 you kind of -- like I said before, you went into
16 some other areas rather than staying on point.

17 MS. NEAL: They were all relevant.

18 CHAIRPERSON REID: You used up a lot of
19 the time.

20 MS. KING: Well, they were emotional
21 issues rather than legal issues. If you could get
22 to the legal issues.

23 CHAIRPERSON REID: They were --

24 MS. NEAL: Your decision is also an
25 emotional issue.

26 CHAIRPERSON REID: Say what specifically

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1 you want us to hear about your points in this case.

2 MS. NEAL: I will get into that. I will
3 get into that. We don't feel it is too late to
4 oppose Marquette University just because it has been
5 operating a private college there already. I mean we
6 appeal to you to think what that says. Marquette
7 has been operating illegally. I mean, would you
8 look kindly on somebody operating illegally?
9 Because that is what they have been doing.
10 Marquette University knew they were violating city
11 laws when they purchased this property. It had been
12 a private residence. They have a lot of lawyers and
13 a lot of money, but they purchased a private
14 residence. They paid, I believe, a little bit under
15 \$800,000.00 for it. They didn't need to come into
16 our residential area. Residential means
17 residential.

18 The Capitol Restoration Society, if I
19 can briefly address that. They were in a very
20 difficult position today. I remember that. And Lyle
21 spoke with great emotion because it is a very
22 turbulent issue within the society and the
23 membership. The Society basically felt forced to
24 get a hearing they had to go along with supporting
25 this. And their negotiator at the time felt he had
26 to cut that deal. It was never voted on by the

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1 members. And the members are quite appalled. So I
2 ask you to look at that under that structure.

3 Marquette moved into the neighborhood
4 and tried to establish themselves as a private club.
5 Now you surely know that that is the most outrageous
6 of use of residential neighborhoods in this city,
7 and I hope we can change that law. The Restoration
8 Society wanted to stop Marquette. That was their
9 goal. They ran out of money and time. They don't
10 have lawyers. They could not continue to fight an
11 appeal in court. So they did what they thought at
12 the time or their negotiator thought was the best
13 thing and cut a deal. We won't oppose you. We will
14 support you if we can at least get a hearing. And
15 that is what is behind that. And I please ask you
16 to put that in perspective.

17 Let me make you aware of an important
18 fact, which I think by itself should disqualify
19 Marquette. Marquette University has entered into an
20 exclusive arrangement with a catering firm called
21 Capitol Catering. Capitol Catering rents the
22 Marquette property for special events by outside
23 groups. I spoke with Capitol Catering yesterday to
24 Melissa. She told me I could rent any area of the
25 house including the basement, including the front
26 yard and the patio for a reception of up to 150

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1 people. She said it would be ideal for a wedding
2 reception. I asked if I could hold a political
3 reception there and she said, yes, of course, it
4 would be great. I asked if she was sure it was now
5 available, and she did not hesitate to say yes, she
6 was sure of that. When I asked the cost, she said
7 she needed to get the updated book. She came back on
8 the phone to say the rent would be between \$850.00
9 and \$1,250.00 plus the catering cost. I asked if I
10 could use it for a night reception for 150 people
11 from 7:00 to 10:00, and she said yes. I asked, what
12 if ran later, and she said, that is okay. But maybe
13 midnight might be too late for the noise because it
14 is a residential area. She knew the structure well
15 and was quite able to describe it.

16 I would like to ask you to read two
17 things that is relevant to this in Sharon Ambrose's
18 letter. One goes to the nature of this dispute and
19 the fact that Marquette has not been a good neighbor
20 to us all along. From Sharon Ambrose, "I am
21 disappointed that the University finds it necessary
22 to establish a school. When the University first
23 purchase the property, neighbors were assured that
24 the home would be the residence of administrators of
25 Marquette's Semester in Washington Program and would
26 serve as a residence for administrators and as a

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1 place to house Les Aspin memorabilia and just small
2 seminar meetings of scholars." She goes on to say
3 how disappointed she is that that has now changed.
4 Because that is not what the neighbors thought.

5 She also in this letter brings up the
6 neighborhood impact. She talks about what the other
7 people are going to talk about, and you will
8 probably rule this not relevant, about the so-called
9 dormitory that is being used. I won't get into that
10 since they are going to. But I can tell you that the
11 students coming in and out of 502 East Capitol are
12 not these polite, diversified people you have heard
13 about. I won't relate to you what one of them said
14 to me last week, because I don't use that language,
15 when I was reading the public hearing notice. My
16 husband will tell you I was shaking when I arrived
17 home. He ended his comment -- well, I am not going
18 to get into that. I will tell you there is
19 great concern in the neighborhood. These young men
20 come and go out of that residence at all hours.
21 They are not just there a few hours a week in the
22 afternoon. They come and go at all hours. We don't
23 imagine that. And they are frequently not polite to
24 neighbors. They are frequently noisy, et cetera.

25 I hope you will deny the application. I
26 hope you will close the facility. It has been

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1 operating illegally. That is not a sign of good
2 neighborhood. I would like to extend to you, if you
3 choose not to deny it, a list of conditions that we
4 hope that you will consider. I would like to tell
5 you that I spoke to 14 neighbors in the immediate
6 adjacent area when I saw the orange notice. I
7 didn't realize this hearing was on until the end of
8 last week. We couldn't get our act together in time
9 to be here -- to have them here today. I talked
10 with 14 residents who live within 2 blocks. 12 of
11 the 14 strongly opposed and were astonished at this
12 and had stories to tell. To say this is a very
13 emotional issue, part of it and a lot of it comes
14 from those of us who simply want to protect Capitol
15 Hill and protect the residential nature of the Hill.
16 We know you are probably not going to side with us,
17 but we just wanted to ask you. And if I can close
18 just saying that, we would just like to ask you to
19 think about this as truly do they have to rent or
20 own and operate a private school in the midst of a
21 residential block? No, they don't. There is plenty
22 of other territory for them to purchase, and they
23 knew that going into this. Thank you.

24 MR. HOOD: Madam Chair, I have just one
25 quick question and I would like a very brief answer.

26 MS. NEAL: Yes, sir?

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1 MS. NEAL: Which ANC do you belong in,
2 6A?

3 MS. NEAL: 6A. And just like Father
4 O'Brien didn't know about and complained about 6B,
5 no one I have talked to knew about that meeting.
6 Maybe it is our own fault. But we all oppose it.

7 MR. HOOD: But you live in 6A?

8 MS. NEAL: Yes, sir.

9 MR. HOOD: And you represent some
10 constituents. What about your commissioner? Where
11 is your commissioner report?

12 CHAIRPERSON REID: We already had it.

13 MR. HOOD: No. My question is have you
14 had any dialogue with your commissioner?

15 MS. NEAL: Yes, I have.

16 MR. HOOD: Who is your commissioner? Is
17 she in here today?

18 MS. SCHMIDT: I am right here. Janet
19 Schmidt.

20 MS. NEAL: And I was not at the meeting.
21 I admit I wasn't at the meeting. I didn't know about
22 it.

23 MR. HOOD: Well, I guess my question
24 goes to who are you representing. She represents --
25 from a legal standpoint, she is the commissioner.
26 Who are you representing?

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1 MS. NEAL: I am representing myself and
2 quite a few neighbors who could not be here today
3 because they didn't know and it was too late to get
4 them here.

5 MS. KING: And did they sign a petition
6 did you say?

7 MS. NEAL: We haven't had time to do
8 that. We will get it to you. No time. We were
9 hoping for a postponement quite frankly.

10 CHAIRPERSON REID: Mr. Hood?

11 MR. HOOD: No. That is okay. Thank
12 you. No, she answered my question. Thank you.

13 CHAIRPERSON REID: Okay. Thank you very
14 much. Any cross examination? Oh, no, I am sorry.
15 Before that, the other two witnesses. Sir or ma'am?

16 MS. GARRISON: Yes, thank you very much,
17 Madam Chair and members of the Board. I appreciate
18 your indulgence at this late hour. My name is
19 Loretta Garrison. I live at 8 Fourth Street, S.E.
20 I am here representing my husband, David Garrison,
21 and myself. I am also speaking on behalf --
22 generally on behalf of neighbors in my block. As I
23 mentioned earlier, I live right next door to 4
24 Fourth Street, S.E., which is used by Marquette
25 University as the dormitory for the students that
26 they bring to their program and have been bringing.

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1 I disagree with Mr. O'Brien's statement
2 that housing is a separate issue and not in this
3 application at all, and I agree with Mr. Schauer
4 that it is unfortunate that your rules, at least at
5 the outset, prohibit you from considering the
6 housing implications of running the University.
7 Because, in fact, it is the reason that we are here.
8 We believe that our experience, which has not been a
9 positive one, with Marquette University should bear
10 on the application. And regrettably because of that
11 experience and because of the position that the
12 Board has taken today, I am here now opposing this
13 application.

14 I want to preface my remarks, though, by
15 saying that I am not opposed to diversity in the
16 neighborhood. I enjoy the diversity of an urban
17 environment. My problem here is the neighborhood
18 and neighborliness. What we have is a situation
19 where we have transient, very young population,
20 constant turnover. They live in a very small
21 apartment building. I believe there are six units
22 and there is by testimony today 20 students. That
23 means there are either 3 or 4 to an apartment. They
24 are unsupervised. There is no adult supervision.
25 Now in the conditions on the building at 502, there
26 are to be no parties outside. However, the students

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1 have parties outside and their area fronts on both
2 Fourth Street and East Capitol Street. They have
3 parties at all hours of the night.

4 CHAIRPERSON REID: Ms. Garrison, you
5 have to keep this to 502.

6 MS. GARRISON: But I am telling you,
7 Madam Chair, it is linked.

8 CHAIRPERSON REID: But we don't have any
9 purview on that other building, and I would suggest
10 --

11 MS. GARRISON: But the behavior of the
12 students --

13 CHAIRPERSON REID: I would suggest that
14 you take that up with the administrators of the
15 school because we don't have any purview over that.

16 MS. GARRISON: We have. We have. And
17 this is our last recourse because the --

18 MS. PRUITT: Excuse me, ma'am, but this
19 is not the correct jurisdiction to address that.
20 That is the whole issue.

21 MS. GARRISON: But may I point out one
22 thing? Mr. O'Brien was asked directly if he
23 oversees the students conduct on the premises and in
24 the neighborhood, and he very deftly avoided
25 answering the question. His response was I am the
26 director, I am a professor, I am a priest. The

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1 answer to the question is that he does not oversee
2 the students' conduct in the neighborhood and that
3 is the reason we are here. What I want to press
4 for, if the Board is so inclined to grant this
5 special exception, is that you include other
6 conditions on the way they take care of and manage
7 these students. And that is the issue.

8 MS. PRUITT: Madam Chair, I have some
9 strong concerns procedurally about going down this
10 road. Because if it is testified, we then need to
11 deal with it in the order. I think it will set --
12 if this is not part of the original application, it
13 is going to set up a case for an appeal.
14 Procedurally we are getting in very shaky ground
15 here.

16 CHAIRPERSON REID: Again, if you have --
17 any concerns that you have, you have your ANC
18 Commissioner.

19 MS. KING: You also have --

20 CHAIRPERSON REID: That you can use.

21 MS. GARRISON: We did not know about
22 this until I saw the notice posted on Sunday
23 evening.

24 CHAIRPERSON REID: But --

25 MS. GARRISON: We have been dealing as a
26 neighborhood with the landlord and with Marquette

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1 for three years.

2 CHAIRPERSON REID: I understand that.

3 MS. GARRISON: And their attitude has
4 been that you may have a problem, but it is not our
5 problem.

6 CHAIRPERSON REID: Okay, excuse me. You
7 and I cannot talk at the same time. We are trying
8 to give you the opportunity to speak. Nonetheless,
9 when I try to speak, it is not in your best interest
10 to continue to talk.

11 MS. GARRISON: I do apologize.

12 CHAIRPERSON REID: Okay. What I was
13 telling you is that your ANC representative is
14 behind you --

15 MS. GARRISON: I don't believe she is my
16 rep.

17 CHAIRPERSON REID: She is not?

18 MS. GARRISON: No.

19 CHAIRPERSON REID: Then it is Mr. Simon.
20 So through --

21 MS. GARRISON: Well, Mr. Waldren
22 actually.

23 CHAIRPERSON REID: Well,
24 whoever the person is, those concerns can be best
25 addressed in meeting with and talking to your ANC
26 representative. And if you have conditions, then
that can be -- we cannot allow a condition to be

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1 imposed on an order by an individual. So it has to
2 be done with your body -- your ANC or your
3 governmental body that is established for that
4 purpose, and have it proffered through them if that
5 is in fact what you want to do. You just can't --
6 we can't allow you to do it because we don't have
7 the purview to do that.

8 MS. GARRISON: Well, I am afraid what
9 has happened is that we are being denied any avenue
10 to address our grievances.

11 CHAIRPERSON REID: But you are not.

12 MS. GARRISON: Well, we are because of
13 the procedure that you are operating under. If you
14 move ahead and grant the special exception, then it
15 is done and over with.

16 CHAIRPERSON REID: We are not doing
17 anything today.

18 MS. KING: Madam Chair, may I make an
19 exception?

20 CHAIRPERSON REID: Yes.

21 MS. KING: If you have a noise problem
22 with that neighboring building --

23 MS. GARRISON: We have a series of
24 problems. That is one.

25 MS. KING: Then you should address the
26 Department of Consumer and Regulatory Affairs about

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1 those problems. There is no precedent. It would be
2 totally illegal for us to impose a condition on 502,
3 which we may -- if it is granted, we very likely
4 will impose conditions. But to impose a condition
5 on that property relating to another property is out
6 of the question.

7 MS. GARRISON: I appreciate that, Ms.
8 King. However, it seems to me that when you agree
9 to establish a school where the school is going to
10 bring in from the outside students and they will
11 have to house them somewhere, whether it is on our
12 block or another block or wherever, that that is
13 going to create an impact, particularly if the
14 University --

15 MS. KING: We understand your point.

16 MS. GARRISON: -- refuses to be
17 responsible for its students and leaves them in an
18 unsupervised environment, which is what is
19 happening.

20 MS. KING: We understand your point.
21 Thank you very much.

22 MR. BROWN: My remarks would be
23 completely out of order. I have sat here patiently
24 for six hours. I am Holmes Brown. I -- just to
25 clarify one point, I wrote down that I was an
26 opponent with conditions. I didn't know what to

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1 choose because there wasn't an opportunity to say
2 one was neutral or something. I support a multiple
3 use community and I have been supportive of the Les
4 Aspin Institute. However, I share 80 feet of common
5 wall with the residence in which many of the
6 students live, and I do think that if you are
7 looking at the impact of the case before you that it
8 does make some sense at least to talk about it. I
9 have just been told that doesn't make any sense or
10 that you won't do it. So I remember -- well, that
11 is my situation.

12 I think that the neighborhood has
13 concerns. The testimony earlier said that the folks
14 who are attending occasional classes in the basement
15 are not in 502. They are elsewhere in the
16 neighborhood. The impact comes elsewhere and I
17 think that that is relevant. But I have been told
18 that it isn't relevant and that we have to take it
19 up with other people. We have dealt with Marquette.
20 We have dealt with the owners of the property who
21 have tried to helpful. The Lewis's were supportive
22 of our application here. But --

23 MS. KING: I am sorry, who are the
24 Lewis's?

25 MR. BROWN: The Lewis's are the owners
26 of the property in which the students live. But I

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1 think what Laurie has said is that the problem is
2 you have folks coming to town for six weeks who are
3 unsupervised and we just have continuing problems
4 with noise, people parking -- not their cars, other
5 peoples -- garbage and this sort of stuff. We have
6 dealt with everybody else, and I guess we felt at
7 least this was an opportunity to try and make you
8 aware of some of the ancillary problems for the
9 neighborhood that are associated with this
10 application.

11 CHAIRPERSON REID: And, sir, your point
12 is well taken. And just as we told this lady --

13 MS. GARRISON: Ms. Garrison.

14 CHAIRPERSON REID: Ms. Garrison, it is
15 not within our purview to impose any conditions on
16 that property. And we also suggested the procedures
17 that you could best utilize to accomplish your goal.
18 And I don't think -- and I may be mistaken, but I
19 don't think that Marquette would be opposed to
20 trying to work with you in that regard to see to it
21 that that negative impact is somehow mitigated. And
22 that is the way to do it through your ANC.

23 MR. BROWN: Well, I wouldn't be here if
24 I hadn't made an effort to utilize some of the other
25 options that you've mentioned. I mean, we have
26 talked to Marquette. I have called them. They are

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1 responsive. I am just saying there are some
2 inherent problems.

3 CHAIRPERSON REID: What about your ANC?

4 MR. BROWN: Well, if kids are having a
5 party on the roof at 2:00 in the morning, ANC isn't
6 going to help me.

7 MS. KING: Call the police.

8 MR. BROWN: I do.

9 MS. GARRISON: We have done that.

10 MS. KING: There is a nuisance line for
11 the police. That is who you call.

12 MR. BROWN: All right.

13 CHAIRPERSON REID: But again, through
14 your ANC, and having them to basically address your
15 grievances through conditions that can then be
16 proffered to this Board to be put into an order.

17 MR. BROWN: Okay. Well, once again,
18 because were outside the 200 foot area, I didn't
19 know about this. As I say, I have supported a
20 multi-use neighborhood. I have tried to work with
21 folks. I just saw this as an opportunity. You all
22 have been here just as long as I have.

23 CHAIRPERSON REID: No, we have been here
24 longer.

25 MR. BROWN: Well, longer. And I get to
26 go home tonight and you get to come back here for

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1 another round probably in the next --

2 MS. KING: We have another case if we
3 ever finish this one.

4 MR. BROWN: I see. So I am bowing out
5 at this point and I appreciate it.

6 CHAIRPERSON REID: Okay. But this
7 particular --

8 MS. KING: Madam Chair, the letter from
9 Mrs. Ambrose.

10 CHAIRPERSON REID: Okay. This
11 particular case will not be decided today. At the
12 end of this case, we will then decide how to best
13 take into consideration all of the various testimony
14 that we have heard here today and what to do to best
15 accommodate you.

16 MS. GARRISON: Madam Chair, a question.
17 If I understood correctly, at the very beginning at
18 around 1:00, you indicated that the record would
19 remain open to receive written testimony into --

20 CHAIRPERSON REID: That is exactly what
21 I am referring to.

22 MS. GARRISON: Okay. So the cutoff date
23 is --

24 CHAIRPERSON REID: Well, we are not
25 doing that right now. We have to finish the case
26 first. At this point we have to take into the

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1 record the highlights of Council Member Ambrose's
2 letter in opposition to this particular application.
3 And then we will have closing remarks. We will have
4 cross examination and then closing remarks by the
5 applicant and then we will determine a time line for
6 submissions.

7 MS. SCHMIDT: Will there be an
8 opportunity for me to make one more statement?

9 MS. PRUITT: No.

10 MS. KING: No.

11 MS. SCHMIDT: It is very important.

12 MS. KING: It is going to be open. The
13 record will be open. You can write it.

14 MS. NEAL: This is the ANC you just told
15 us to go to.

16 MS. KING: We have been here since 9:00.

17 MS. SCHMIDT: One minute.

18 MS. KING: No. Out of order.

19 MS. NEAL: This is the ANC.

20 MS. KING: Out of order, Madam Chair.
21 Out of order.

22 CHAIRPERSON REID: We have to go in
23 order. She will have an opportunity to do so in
24 writing.

25 MS. KING: Counsel Member Ambrose has
26 made three points. That this is a fundamental

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1 breach of residential protections. That she is
2 concerned that a school in the sense commonly used.
3 That our planning and zoning discussions did not
4 refer to university use. Third, the concern about
5 tangential neighborhood impacts, which is the
6 behavior of the students elsewhere than at 502. She
7 concludes by saying, "Should the Board determine
8 that the use exception being asked is appropriate, I
9 urge that strict conditions be placed on any order
10 granting such exception in order to both preserve
11 the right of residential neighbors to the quiet
12 enjoyment of their homes and to avoid any precedent
13 setting action that might erode the residential
14 character of close-in East Capitol Street. I also
15 will add as a matter of record that I admire the
16 long and distinguished history of Marquette
17 University and am grateful for the excellent
18 education and happy university experience it
19 provided to one of my children, who is an alumnus.
20 We have been pleased to have Marquette University as
21 a neighbor thus far and look forward to an
22 appropriate resolution of this issue."

23 CHAIRPERSON REID: Thank you. Cross
24 examination of these witnesses.

25 MR. COTTINGHAM: Given the lateness of
26 the hour and you have said the record will be open,

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1 there are some things we would take objection to as
2 far as statements of fact or illegality and things.

3 MS. PRUITT: Those -- Madam Chair, those
4 can be addressed --

5 MR. COTTINGHAM: In writing.

6 MS. PRUITT: In closing or in --

7 MR. COTTINGHAM: I was going to say,
8 maybe we could address them in writing to the Board
9 to avoid a --

10 CHAIRPERSON REID: Not -- you mean
11 address it in writing to --

12 MR. COTTINGHAM: Well, to Ms. Neal
13 particularly and you.

14 MS. KING: The record is going to be
15 open.

16 CHAIRPERSON REID: The record will be
17 open.

18 MR. COTTINGHAM: The record will be
19 open. So rather than --

20 CHAIRPERSON REID: If you choose to do
21 it that way.

22 MR. COTTINGHAM: Rather than argue about
23 the legality of our presence there, for example.

24 MS. PRUITT: Well, Madam Chair, we would
25 also suggest that both the applicant and the parties
26 in opposition submit draft orders of proposed

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1 findings of fact and conclusions of law where you
2 can then address the issues there.

3 MR. COTTINGHAM: Ms. King took my one
4 question for Ms. Neal about the last sentence in --

5 MS. KING: I beg your pardon?

6 MR. COTTINGHAM: You took my one
7 question about the last sentence in Ms. Ambrose's
8 letter about her general support of our presence as
9 a university. Ms. Neal had quoted the letter from
10 Ms. Ambrose, and it concludes with the final
11 sentence.

12 CHAIRPERSON REID: No, wait one second.

13 MS. KING: I have already read that --
14 the last two paragraphs.

15 CHAIRPERSON REID: First of all -- now
16 this part is over. The opposition part. The
17 closing remarks by the applicant, if you would like
18 to address that in your closing remarks, you may do
19 it.

20 MR. COTTINGHAM: That is fine.

21 CHAIRPERSON REID: Thank you very much.

22 MS. KING: Please be brief.

23 FATHER O'BRIEN: I will be most brief.
24 My closing thought is the same as my opening one.
25 That we have been operating this way. I live at the
26 house. The basement is the private club that we

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1 want to have acceptable to the neighborhood for a
2 special exception. I take exception with some of
3 the comments made that we proceeded illegally and
4 knew we were proceeding illegally. That is patently
5 false, and anyone that could make such a scurrilous
6 allegation should be ashamed. So I just ask you to
7 consider the facts, consider where we are. That we
8 have been there for four years and that we moved to
9 the special exception at the request of a
10 neighborhood organization that when the agreement
11 was signed there would be no further problems. And
12 that is what expected.

13 MS. KING: Father, to what degree are
14 the students supervised when they are not in your
15 basement or in your house?

16 FATHER O'BRIEN: Well, it -- we -- it
17 depends on where our students are. If it is 4
18 Fourth Street -- the students who come in our
19 program are not required to have housing. We
20 provide housing for those students that enroll in
21 our program, if they are unable to have housing. We
22 have had students come in from Arlington and
23 elsewhere.

24 MS. KING: These are not Marquette
25 students?

26 FATHER O'BRIEN: What is that?

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1 MS. KING: The students are not enrolled
2 in Marquette University? Is that what you are
3 suggesting?

4 FATHER O'BRIEN: No. I am suggesting
5 that if they enroll in our program, and we take --
6 in the fall, we have 16 students enrolled. If they
7 do not have housing, we provide housing for them.

8 MS. KING: But they are totally
9 unsupervised when they are not under your -- you are
10 the only staff person involved in this operation, is
11 that correct?

12 FATHER O'BRIEN: Well, we usually have
13 an RA, a resident assistant in the building.

14 MS. KING: In what building?

15 FATHER O'BRIEN: In the building where
16 we are housing our students at. We rent at 4 Fourth
17 Street, a block away.

18 MS. KING: And does this person have --

19 FATHER O'BRIEN: It is a resident
20 assistant who has been trained at the University in
21 dealing with student issues. Remember, these
22 students are legal adults. They can rent the
23 apartment --

24 MS. KING: I understand that. But I
25 mean if you are saying that you have somebody there
26 to supervise them and what we have is nothing but a

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1 deafening outcry from the people who live near them.

2 FATHER O'BRIEN: Yes.

3 MS. KING: I mean, this is not -- the
4 town gown situation is not unusual, and I am sure
5 everybody who has ever been a student or an academic
6 is well aware of that. But this seems to be
7 particularly difficult at this time. And I just --
8 do you have a house father or mother or whatever the
9 modern term for it is, in residence?

10 FATHER O'BRIEN: I will give you an
11 example. This fall, we have a 30-year-old woman who
12 will be living in that residence who is having her
13 own apartment who is an RA, a resident assistant
14 trained by the University in dealing with issues of
15 student problems with roommates and conduct. We
16 have a code of conduct of the university. They can
17 be expelled if certain things happen. I mean, we
18 have a long track record of operating an
19 institution, I think.

20 MS. KING: I understand that. My
21 brother went there as an E-12 in World War II.

22 FATHER O'BRIEN: Oh, excellent.

23 MS. KING: But I -- you know, there is
24 no RA or whatever you call it there now, is that
25 correct?

26 FATHER O'BRIEN: There are no students

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1 there now. They are gone. We have concluded their
2 program.

3 CHAIRPERSON REID: Has an RA been there?
4 Is this something new or has the RA been there?

5 FATHER O'BRIEN: No, no, no. We have
6 RAs there on a regular basis. Someone who has been
7 in the program who comes back and who reports to me
8 or to our assistant, Tom, if there are any
9 complaints about behavior. I haven't gotten very
10 many to be very frank. I don't know why neighbors
11 would not call --

12 MS. KING: But they know where you live
13 now.

14 FATHER O'BRIEN: Oh, they sure do.

15 MS. KING: And I suspect they will come
16 after you.

17 FATHER O'BRIEN: I went over the other
18 night when one of the gentleman who was here said
19 that there is garbage outside one of the bins. I
20 picked up the garbage, took it and put it into the
21 garbage cans because the kids were moving out.
22 There was a lot of excess garbage.

23 CHAIRPERSON REID: What is the average
24 age of the students?

25 FATHER O'BRIEN: They are usually
26 juniors. They are usually 21 years old -- 20 or 21.

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1 Juniors and seniors.

2 CHAIRPERSON REID: Now I just have one
3 question regarding -- one of the witnesses testified
4 that there was some arrangement with the caterer to
5 have parties at that facility.

6 FATHER O'BRIEN: I am absolutely
7 unfamiliar -- we do have an arrangement with that
8 catering company if we have a function. If I, as
9 the director, have a function and I invite you all
10 in -- like we have a group of people from Africa
11 that are coming, a delegation from Ghana and Kenya.
12 I will not have 15 different caterers come in. I
13 don't cook.

14 CHAIRPERSON REID: Was this leased out?
15 I mean leased out for weddings and things of that
16 nature?

17 FATHER O'BRIEN: No. That goes back to
18 about a four-year program before we even got a
19 private club status.

20 CHAIRPERSON REID: So that is no longer?

21 FATHER O'BRIEN: That no longer exists.
22 I don't know if it ever existed. Since I have been
23 in charge, which is from one month before it all
24 started, that has never occurred and it will not
25 occur. Unless it is a Marquette University official
26 function, there is nobody in that building.

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1 CHAIRPERSON REID: Okay. So if there is
2 an official function where you are -- like the group
3 from Africa and you would have -- provide food or
4 refreshments.

5 FATHER O'BRIEN: Yes. And when we use
6 that --

7 CHAIRPERSON REID: How often does that
8 happen?

9 FATHER O'BRIEN: Three times a year
10 maybe.

CHAIRPERSON REID: All right.

11 FATHER O'BRIEN: And I wanted to correct
12 -- when Ms. King had asked before about the use of
13 that building, I do use it on Sunday. I have Mass
14 there and we have brunch afterwards. I said Tuesday
15 and Thursday afternoons. Every Sunday I have Mass
16 at noon and we have -- the students rotate making
17 brunch at my house.

18 CHAIRPERSON REID: And the Mass consists
19 of about how many people?

20 FATHER O'BRIEN: For the students.

21 CHAIRPERSON REID: Oh, the 20 students?

22 FATHER O'BRIEN: It depends upon how
23 religious the group is. But usually between 8 and
24 10.

25 CHAIRPERSON REID: Okay. Any other
26 questions?

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1 MS. KING: They don't sound very
2 religious to me, Father.

3 FATHER O'BRIEN: Oh, they are. You
4 know, during exam time, we go up to a full
5 complement.

6 CHAIRPERSON REID: Any other closing
7 remarks?

8 MR. COTTINGHAM: No. You've asked
9 exactly the points I was going to raise.

10 MS. KING: Okay. Thank you very much.

11 CHAIRPERSON REID: What we need to do is
12 to try to address some of the concerns of the
13 persons in opposition. And you heard what was
14 stated here. So you can see that there is some work
15 that you need to do as far as community
16 relationships and the like and also I think it is
17 very obvious that they would like to see done as far
18 as mitigating some of the negative impacts that they
19 have voiced here experiencing, not directly with
20 Marquette per se, nonetheless some of the
21 peripheral, which in effect while it may not be
22 something that you legally have to do in this
23 purview, nonetheless just from a good neighbor
24 accommodating point of view, it would be wise to try
25 to at least address some of those issues. And Mr.
26 Hart will give you a time line as to -- there are

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1 some things that have to be submitted and in
2 response to and all that, and then we will determine
3 what date we will make a decision. In the meantime,
4 we also would like to have a draft order from both
5 sides, the opposition as well as the applicant that
6 will then address a lot of the issues in regard to
7 the findings of fact.

8 MS. PRUITT: Are you looking to put this
9 on for September 8? That is where we need to start.
10 Because that is what will predicate when submissions
11 are due.

12 MS. KING: Yes, don't you think?

13 CHAIRPERSON REID: Is there room on the
14 schedule? If so, then yes, we can do that.

15 MS. PRUITT: Yes. I mean, yes.

16 CHAIRPERSON REID: Okay.

17 MS. PRUITT: I would just urge that we
18 be very efficient at the meeting.

19 CHAIRPERSON REID: Okay.

20 MS. PRUITT: If that is the case -- and
21 the other question is are you leaving the record
22 open for anything to be submitted or just --

23 CHAIRPERSON REID: Well, we had agreed
24 to leave the record open to have submission by the
25 ANC -- the ANC submission, and then a response by
26 the applicant.

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1 MS. PRUITT: No. But I mean you are
2 leaving the record open --

3 MS. KING: The ANCs have made their
4 submissions.

5 MS. PRUITT: Right. So are you leaving
6 it open for anybody to put anything in or only
7 discrete items? That needs to be clear.

8 MS. KING: I think our agreement was for
9 the community to -- is that -- is this the case?
10 Weren't we going to leave this record open?

11 CHAIRPERSON REID: No. What I said was
12 that the community, through their ANC -- if there is
13 additional information or if there is additional
14 concerns or what have you, to do it through the ANC.
15 And if they want to formulate conditions or
16 whatever, then you do it through --

17 MS. NEAL: Then we have to have time to
18 go to the next ANC Commission meeting, which is not
19 until September, like you gave the other applicant.

20 MS. PRUITT: So we are back in the same
21 process where then the applicant, if we --

22 MS. NEAL: If you force us to go the
23 ANC, you have to give us time.

24 MS. PRUITT: Excuse me, ma'am, you can't
25 talk from the audience.

26 MS. NEAL: I am sorry.

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1 MS. PRUITT: We understand. If you are
2 doing that, then you also need to make sure that the
3 applicant is willing to waive his response time.
4 And that is the same issue. And the other question
5 is the ANC has made their statement. You can leave
6 the record open for individuals to comment.

7 MS. KING: Yes, I don't see that we have
8 to involve -- both ANCs have made their statement.
9 We have it in writing. It was all duly done. There
10 is no ambiguity about the ANC statement. I think
11 what we are doing is leaving the record open for any
12 members of the community who need -- who wish to
13 make -- to add further to the record, either in
14 favor of or in opposition to this application.

15 CHAIRPERSON REID: That is fine with me
16 if that is agreeable to everyone. That is fine with
17 me. Basically I just wanted to make sure that the
18 concerns were being addressed in whatever method we
19 could best accomplish it.

20 FATHER O'BRIEN: With the understanding
21 that ANC 6B --

22 MR. HOOD: Excuse me. I wanted to
23 associate my comments with Mr. Schauer. As he says,
24 it is a community issue. Let's leave it open and
25 let's see if they can resolve it, whether it is the
26 ANC-6A or 6B, the people in opposition, Marquette.

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1 Let's leave it open and see if they can resolve some
2 of these issues. So when September rolls around, it
3 may make our decision a little easier.

4 CHAIRPERSON REID: Work itself out.

5 MR. HOOD: Right. Hopefully. But if
6 not, I will let Marquette know that I do have some
7 concerns that have been addressed -- I mean, that
8 have already been stated. Hopefully within that
9 time frame, they could solve the issue.

10 CHAIRPERSON REID: Okay, what is the
11 time line, Mr. Hart.

12 MS. PRUITT: Okay. Given that, we are
13 leaving the record open for submissions from
14 anybody. Submissions would be due August 25.
15 Responses to those submissions by the applicant or
16 anybody who wants to respond would be due by
17 September 1, so that the Board can convene a meeting
18 on September 8 for a decision. We would also like
19 to get findings of fact and draft orders or draft
20 findings of fact and conclusions of law by September
21 1.

22 MR. COTTINGHAM: By September 1?

23 MS. PRUITT: Correct.

24 MS. SCHMIDT: Who provides --

25 MS. PRUITT: Excuse me?

26 MS. SCHMIDT: Who submits those?

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1 MS. PRUITT: The opposition ANC and the
2 applicant.

3 MS. SCHMIDT: Okay, thank you.

4 MS. PRUITT: And if you have any
5 questions, you are more than welcome to come to the
6 Office of Zoning and we can show you what a draft
7 order looks like so you can get some idea of what we
8 like to see.

9 MS. KING: But she -- her organization
10 is in favor.

11 MS. PRUITT: That is fine. We will take
12 them all.

13 CHAIRPERSON REID: Mr. Simon?

14 MR. SIMON: Yes. We are pleased to go
15 with either route that the Board would like. But to
16 be able to respond to Mr. Hood's suggestion about
17 working an agreement out, for 6B to work something
18 out would require an action by the Commission. The
19 Commission meets on the second Tuesday of September.
20 That would bang up against this schedule.

21 MS. PRUITT: I think the question is 6B
22 has already taken its position unless they are going
23 to rescind that position.

24 MR. SIMON: Right. But that was Mr.
25 Hood's suggestion as I understood it.

26 MS. PRUITT: I understand. I

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1 understand. But that is also -- I mean, my concern
2 is keeping the process correct and legal and not
3 allowing the process to be open or subject to
4 challenge for procedural mistakes.

5 MR. SIMON: I appreciate that, and we
6 won't do anything to interfere with that. I was
7 hearing the suggestion as being very analogous to
8 the ABC Board's use of voluntary agreements, where
9 an ANC which contests an ABC license is encouraged
10 to work out an agreement, and to further that
11 possibility, the Board will provide some extended
12 period. We report at the status hearing. If we
13 can't, then we go to a protest hearing. The
14 advantage to all parties is that there is no longer
15 a contested case.

16 MR. HOOD: And that is exactly where I
17 was trying to go.

18 MS. PRUITT: Well this is -- by the
19 nature of the case it is contested, period.

20 MR. HOOD: But, Mr. Simon, I think --
21 what are you actually asking? Are you saying you
22 don't have enough time to respond?

23 MR. SIMON: I am saying that this being
24 August, ANC-6B is out during the month of August.
25 So our next meeting will be in September. In order
26 for the Commission to withdraw its protest, which is

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1 what would be wanted --

2 MR. HOOD: Can we do the same thing that
3 we did --

4 CHAIRPERSON REID: Let me ask this. If
5 not on September 8, then the following week is what?

6 MS. PRUITT: The next meeting date is
7 October.

8 CHAIRPERSON REID: No. That is true.
9 However, we could have a special meeting prior to
10 the hearing date.

11 MS. PRUITT: Which would be the 21st, I
12 believe.

13 MR. HART: The 15th --

14 CHAIRPERSON REID: The 15th. Can we do
15 it then? Have a special meeting --

16 MS. KING: Well, we have already -- the
17 whole calendar for September is screwed up because
18 we set the 22nd as an all-day hearing for waste
19 management because Paul told us two weeks ago that
20 we were meeting on the 1st and the 15th. So --

21 CHAIRPERSON REID: Let us try to have a
22 special meeting prior to the hearing in which we
23 could take this case up, and that would give them
24 ample time to meet and to come to some resolution.
25 How about that?

26 MS. PRUITT: I just need to get the date

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1 of when you want to have the hearing so I can back
2 up from there.

3 CHAIRPERSON REID: You need what?

4 MS. PRUITT: So are you suggesting that
5 you convene a special public hearing on -- oh,
6 excuse me, I have the calendar right here.

7 CHAIRPERSON REID: No, a public meeting
8 at 9:00.

9 MS. PRUITT: A special public meeting on
10 the day that we have our hearing on the 22nd?

11 CHAIRPERSON REID: No. I was thinking
12 more of the -- don't we have a meeting on the 15th
13 or the 16th?

14 MS. KING: No.

15 MS. PRUITT: No. It will be on the
16 22nd.

17 CHAIRPERSON REID: Right. That is
18 right. Okay.

19 MS. PRUITT: The 8th and the 22nd.

20 CHAIRPERSON REID: Would that be
21 adequate, Mr. Simon? Would that be adequate if we
22 did a special meeting on the 22nd at 9:00?

23 MR. SIMON: Yes. ANC-6B --

24 CHAIRPERSON REID: For the decision. To
25 give time for the ANC to meet and for you all to try
26 to come to some resolution among yourselves and the

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1 like.

2 MR. SIMON: Yes, I understand the
3 suggestion.

4 MS. KING: And in the meantime, you
5 might talk to Mr. -- to the Capitol Hill Restoration
6 Society and to Marquette and to all of the players
7 and maybe you all can get together and hammer out an
8 agreement as to what you all want to do.

9 MR. SIMON: That is what I understand
10 the suggestion to be.

11 MS. KING: In the meantime, could we
12 recess for a moment?

13 MS. PRUITT: Well, I would like to just
14 get the conditions since we have changed the times,
15 please. So the submissions would be due by
16 September 8 and responses by September 15 for the
17 22nd meeting. And findings of fact would then be
18 due on the 15th.

19 MR. COTTINGHAM: Right.

20 CHAIRPERSON REID: Okay. We are going
21 to take a very short 3-minute recess and we will be
22 right back to finish up two cases.

23 (Whereupon, at 7:50 p.m. off the record
24 until 8:00 p.m.)

25 MR. HART: Please raise your right hand
26 to be sworn.

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(WITNESSES ARE SWORN.)

CHAIRPERSON REID: Okay, tell me your name again?

MS. JOHNSON: Alberta Johnson.

CHAIRPERSON REID: Okay. And your address again, Ms. Johnson? Your address, Mrs. Johnson?

MS. JOHNSON: My address is 6215 Longfellow Street, Riverdale, Maryland.

CHAIRPERSON REID: Okay. Now we just discussed with you when you were here before about the procedure, and now you are straight, right?

MS. JOHNSON: Yes, ma'am.

CHAIRPERSON REID: Okay. So what you need to do is to just go straight down 205 and tell us how you comply with the regulations.

MS. JOHNSON: First, I want to say thank you for giving me the opportunity to get myself together and your patience and your consideration.

CHAIRPERSON REID: Okay. No problem. You don't have to stand.

MS. JOHNSON: I can't hear that well, so I would like to stand.

CHAIRPERSON REID: Okay, however you are comfortable.

MS. JOHNSON: I think I can present

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1 myself better. We will have no problems with the
2 community. The community is in agreement with us
3 having a center. There is no center in that area
4 for childcare.

5 CHAIRPERSON REID: At least within 1,000
6 square feet?

7 MS. JOHNSON: Right.

8 CHAIRPERSON REID: All right.

9 MS. JOHNSON: No center. And we will
10 not be of any adverse conditions with the community.

11 CHAIRPERSON REID: You haven't had any
12 complaints from anyone after they saw your posting
13 of your hearing for today?

14 MS. JOHNSON: No. We haven't had any
15 complaints.

16 MS. KING: Have you had any contacts
17 with the ANC, the Advisory Neighborhood Commission
18 7D?

19 MS. JOHNSON: They got notice.
20 Everybody got a notice and we haven't had any --

21 MS. KING: Nobody has been in touch with
22 you?

23 MS. JOHNSON: No.

24 CHAIRPERSON REID: Okay, what about the
25 parking?

26 MS. JOHNSON: Parking -- we are going to

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1 use the church parking lot which is right next to
2 the house.

3 CHAIRPERSON REID: How many spaces is
4 that?

5 MS. JOHNSON: We have 9 spaces.

6 CHAIRPERSON REID: Okay, adequate
7 parking. What about the play area?

8 MS. JOHNSON: We have a play area in the
9 back and front yard of the house.

10 MS. KING: Is that fenced in?

11 MS. JOHNSON: Ma'am?

12 MS. JOHNSON: The back is fenced in.
13 The front is not totally fenced, but we do have a
14 brick wall, but it is short. We have -- if we get
15 the zoning and we get licensed for the daycare
16 center, we will then use the other property on the
17 corner for a playground. So that is in the works.
18 If we get the place --

19 CHAIRPERSON REID: What property is on
20 the corner? What is on the corner?

21 MS. JOHNSON: There is only one other
22 house in-between the church and the corner. And the
23 church owns the two lots on the corner. So now we
24 own everything except the one house, and that house
25 -- the people who own that house is a member of the
26 church and they are in agreement with us having the

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1 daycare center. So we don't have any opposition.

2 MS. KING: But the playground -- if you
3 get permission to use this house, where will the
4 playground be? Will it be on the same property as
5 the child development center or located someplace
6 else?

7 MS. JOHNSON: It would be one door from
8 the center.

9 MS. KING: And it is another piece of
10 property owned by the same church?

11 MS. JOHNSON: Yes.

12 MS. DINKINS: Initially, they intend to
13 use the same -- the backyard of the actual house.

14 MS. KING: I understand. But she did
15 mention that there was --

16 MS. DINKINS: And in addition --

17 CHAIRPERSON REID: Excuse me, you have
18 to give your name and your address.

19 MS. DINKINS: My name is Diane Dinkins.
20 I live at 6215 Longfellow Street, Riverdale,
21 Maryland. The 20 students in this plan are composed
22 of 10 students that will probably be early and late
23 childcare and 10 that would be there through the
24 day. So it is mostly -- you know, it won't be that
25 many students there either. So that yard will be --
26 will give them lots of space if they have to take

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1 shifts with half of them.

2 MS. KING: Now, where will the drop-off
3 and the pick-up for the children be?

4 MS. JOHNSON: Drop-off and pick-up?
5 Drop-off and pick-up can be in front of the house
6 because there is no parking on that side of the
7 street. So you can just drop off.

8 MS. KING: Okay. So you will have staff
9 people who will go and escort the children from the
10 car to the -- into the school?

11 MS. JOHNSON: Or the parent will bring
12 them into --

13 MS. KING: Well, if there is no parking
14 there, the parent can't do that. I mean, they can't
15 park and get out of the car and take the children
16 in.

17 MS. JOHNSON: We are going to be there
18 to assist them. But just to -- you know, they could
19 run their child in or we could pick them up, either
20 one. But right around the corner, if they go around
21 the corner, is our parking lot. So they can park
22 and bring them in or we will be out there to pick
23 them up.

24 MS. KING: Okay. Would it not be better
25 if you had them drop the children off in the parking
26 lot rather than on the street?

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1 MS. JOHNSON: Yes, it would be better.

2 MS. KING: Wouldn't it be safer?

3 MS. JOHNSON: Yes.

4 MS. KING: Would you have any objection
5 to our imposing that as a condition?

6 MS. JOHNSON: None at all.

7 MS. KING: Okay. What about food
8 service? Are you catering? Are you providing food?

9 MS. JOHNSON: We are going to provide
10 the food.

11 MS. KING: From -- that you are cooking
12 on the premises?

13 MS. JOHNSON: Yes, ma'am.

14 MS. KING: And you will have all the
15 necessary permits for that?

16 MS. JOHNSON: Yes.

17 MS. KING: And inspections of your
18 kitchen?

19 MS. JOHNSON: Yes. I have been to the
20 orientation that the Childcare Development Program -
21 - I have been there and they told me the
22 requirements, what we need.

23 MS. KING: Okay. Now one thing that
24 happens if you are going to be catering to that
25 number of children, and some of them are going to be
26 there for a 12-hour period, that is a lot of meals

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1 and snacks and so forth and a lot of probably
2 plastic and paper and products and trash from the
3 kitchen and so forth, which could cause a bad
4 condition for the neighborhood. Are you -- do you
5 have a dumpster and are you -- is it going to be
6 picked up twice a week?

7 MS. JOHNSON: We have that on the church
8 grounds. And we have -- it is secure.

9 MS. KING: And how often is it emptied?

10 MS. JOHNSON: I really don't know. But
11 we don't have a problem with the church. You know,
12 so --

13 MS. KING: Yes, but you are --

14 CHAIRPERSON REID: Is it a regular
15 contractor?

16 MS. JOHNSON: Yes. If we need to have
17 additional pick-up, we will have it.

18 MS. KING: Okay.

19 CHAIRPERSON REID: If appropriate, okay.

20 MS. KING: Because, you know, two or
21 three meals a day for 20 kids produces an awful lot
22 of garbage.

23 MS. DINKINS: The church is used to
24 handling large influxes of trash whenever they have
25 a funeral and we have family reunions there -- you
26 know, lots of special large occasions.

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1 MS. KING: But this is going to be --
2 this isn't going to be special events. This is
3 going to be something that happens --

4 MS. DINKINS: Right. But what I am
5 saying is that they are used to handling it if need
6 be.

7 MS. JOHNSON: We will make arrangements
8 not to be a nuisance and have trash. Because we
9 know that is a health hazard.

10 MS. KING: And this building is directly
11 next to the church?

12 MS. JOHNSON: Yes.

13 MS. KING: So, I mean, there is no gate
14 or barrier between the church parking lot and your
15 backyard, or is there?

16 MS. JOHNSON: The house has a gate or a
17 fence.

18 MS. KING: A gated fence so that the
19 children, if they are playing in the backyard or are
20 delivered to the backyard aren't in danger from the
21 church parking lot that is immediately next to it?

22 MS. JOHNSON: Right.

23 CHAIRPERSON REID: All right. We will
24 also go into conditions in a few minutes. But right
25 now, the ANC said that -- you did notify the ANC,
26 but we don't have a letter from the ANC. So the

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1 assumption is that they don't have a problem with
2 your application and there are no other government
3 reports.

4 MS. KING: No.

5 CHAIRPERSON REID: Persons or parties in
6 support of the application? Did you want to say a
7 few words?

8 MS. DINKINS: I just had a couple of --

9 CHAIRPERSON REID: Your name. Give your
10 name.

11 MS. DINKINS: Diane Dinkins. I just had
12 a couple of points which I am sure you are very,
13 very well aware of. It is so obvious by doing this
14 they intend to have a staff of 4 and provide service
15 for 20 students or 20 children. So with that, they
16 are allowing for dedicated jobs for the community
17 and allowing up to 20 parents to have jobs as well.
18 And we have also heard today how difficult it is to
19 acquire property for large functions and large
20 organizations in this neighborhood. This church is
21 sizeable, and for them to be able to add that extra
22 service to the community plus have them accommodate
23 the same number of members would be a difficulty if
24 they were to have to do it some other place. So
25 they are adding a service to this community.

26 CHAIRPERSON REID: Thank you very much.

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1 MS. DINKINS: Thank you.

2 CHAIRPERSON REID: Persons or parties in
3 opposition? Seeing none, closing remarks by the
4 applicant.

5 MS. JOHNSON: Right. My closing remarks
6 are that several years ago in the church, we had
7 before and after for the school that is across the
8 street from our church. We provided before school
9 and after school services to them. And when we
10 stopped, the school asked us to try to help them
11 because there were a lot of mothers who had to be to
12 work before school opened, and that is why we
13 started it. And now that we have the house, I
14 wanted to revise our original application. There
15 was a mistake on it. We said that we would have
16 children from 5 to 11, but I think we could benefit
17 the community by having ages 2 to 12. That would be
18 age 2 up until time they go to school, and we could
19 have the before and after that would -- since it is
20 an elementary school, 12 is about the age that they
21 would be out of elementary school. Also, it was
22 noted in the first application that we would only
23 use the first floor of this split level house, but
24 we are going to use the whole house. I wanted to
25 make those two revisions, please.

26 CHAIRPERSON REID: Okay. Ms. Pruitt-

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1 Williams, is that permissible to --

2 MS. PRUITT: I am just trying to -- that
3 is what I was trying to ascertain.

4 CHAIRPERSON REID: Do we need an
5 announcement?

6 MS. PRUITT: It doesn't change the
7 relief that is requested, I don't believe.

8 CHAIRPERSON REID: Two floors and also
9 the ages from 2 to 12 rather than 5 to 11.

10 MS. PRUITT: I don't think the ages --
11 the only concern I have with the changes of the age,
12 when you go down to 2 years old, I don't know if --
13 this is not our requirement, but Child Development
14 may require more staff for younger children.

15 CHAIRPERSON REID: Well, also in 205, it
16 states that they must be in compliance with all the
17 --

18 MS. PRUITT: Right. And if there is
19 some reason that Child Development requires 6 staff
20 and we have only granted it for four, then they
21 would not be able to operate it for two-year-olds,
22 or at least not for up to 20 children. They can
23 leave it to 20 children, and you can also leave it
24 for four staff. How you choose to sort of
25 distribute the ages and the requirements that will
26 be imposed by Child Development, we don't have any

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1 control over. But you cannot exceed 20 children or
2 4 staff. So it may mean you would not be able to
3 take in as many if you are required to have more
4 staff for younger kids.

5 MS. JOHNSON: Okay.

6 MS. PRUITT: If you understand that.

7 MS. JOHNSON: Yes.

8 MS. PRUITT: The other question I have
9 though was hours of operation. I don't know if that
10 has been addressed.

11 MS. KING: 6:30 to 6:30.

12 MS. PRUITT: Thank you.

13 MS. KING: Monday through Friday.

14 CHAIRPERSON REID: All right. Are you
15 done with the closing remarks?

16 MS. JOHNSON: Yes.

17 CHAIRPERSON REID: Okay. So are you
18 going to request that we give you a decision today,
19 which is called a summary order bench decision?

20 MS. KING: Yes.

21 MS. JOHNSON: Yes, a summary order
22 decision.

23 CHAIRPERSON REID: Okay.

24 MR. HOOD: Madam Chair, I make a motion
25 that we approve Case No. 16478, East Friendship
26 Baptist Church with Ms. King giving us the

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1 permission?

2 MS. KING: Second.

3 CHAIRPERSON REID: You seconded?

4 MS. KING: I seconded.

5 MS. PRUITT: I have the conditions. I
6 have them written down.

7 MS. KING: I seconded. 20 children ages
8 2 to 12 years of age, 4 staff. The hours are 6:30
9 a.m. to 6:30 p.m., Monday through Friday. At least
10 one parking space to be provided in the church
11 parking lot next door. Drop-off and pick-up to be
12 at the church parking lot next door, not on the
13 street. Any play area, whether it be part of the
14 yard of this house or elsewhere should be secure.
15 And if the children are moved from the house to that
16 to another play area, they need to be escorted and
17 cared for. And then the usual.

18 CHAIRPERSON REID: Trash picked up as
19 appropriate.

20 MS. PRUITT: And my other question is is
21 it trash picked up as appropriate and consolidated
22 and coordinated with the church? Is that how it is
23 done?

24 MS. JOHNSON: Yes.

25 MS. KING: We just -- it is there trash
26 and it gets picked up as appropriate.

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1 CHAIRPERSON REID: Do we want to limit
2 it to 5 or 10 years?

3 MS. KING: Okay, let's limit it to --
4 let's have it 5 years for the first order to make
5 sure that there is no problems with the neighbors.
6 And then in five years, you can come back and we
7 will talk about it again.

8 MS. JOHNSON: Thank you.

9 MS. PRUITT: Staff would record the vote
10 as 3 to 0 to approve. Motion made by Mr. Hood,
11 discretely seconded by Ms. Reid. Thank you.

12 MS. JOHNSON: Thank you.

13 CHAIRPERSON REID: Thank you. Good luck.
14 You should have your order in about two weeks. The
15 last case of the day, Mr. Hart?

16 MR. HART: Application 16455 of the
17 Amoco Oil Company pursuant to 11 DCMR 3108.1 and
18 Subsection 726.1 for a special exception to enlarge
19 an existing gasoline service station to include the
20 sale of motor vehicle fuel in a C-2-A District at
21 premises 3426 Georgia Avenue, N.W., Square 2894, Lot
22 906. Would those persons intending to testify
23 please stand and raise your right hand.

24 (WITNESSES ARE SWORN.)

25 MS. KING: No opposition in this case,
26 Madam Chair. I suggest that Mr. Brown give us the

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1 highlights and we move on with it.

2 CHAIRPERSON REID: All right.

3 MR. BROWN: Madam Chair, I would be glad
4 to cooperate. My name is Patrick Brown --

5 CHAIRPERSON REID: Given the lateness of
6 the day.

7 MR. BROWN: Yes. I am still with
8 Greenstein, DeLorme and Luchs.

9 MS. KING: You think.

10 MR. BROWN: Yes. I haven't been back,
11 but I am hopeful. With me today just briefly is
12 Steve Faletto. He is the zoning coordinator for the
13 Amoco Oil Company. Next to him is Adam Volanth. He
14 is the Project Engineer from Bohler Engineering, the
15 project engineering firm, and my co-counsel, Tony
16 Rachal on the end. We are establishing a -- or
17 enlarging an existing gas station that has been
18 there since 1954. The only difference in a nutshell
19 is that an existing building is being demolished and
20 a building of about a quarter of the size will be
21 built to replace it. The canopy that exists will be
22 expanded to accommodate six pumps rather than four.
23 So if you count canopy and building, it is a slight
24 increase in the bulk on the site. As a practical
25 matter, you've got a very small building now and a
26 bigger canopy. So the impact, I think, just

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1 intuitively is probably going to be less. Not
2 intended to be a new draw of customers, but just to
3 serve the existing ones.

4 The standards set forth -- the easy ones
5 are it can't be within 25 feet of a residence
6 district unless -- and that is applicable here -- it
7 is separated by a public alley which runs at the
8 back of the site just north of the -- actually, to
9 the west of the green space there. We don't believe
10 testimony will be given to be presented both in the
11 written form or today -- there will be no
12 objectionable or dangerous conditions. The
13 operation will continue pretty much as it has been
14 on a gas sale basis. You will see quite a few site
15 enhancements -- landscaping and other security and
16 lighting measures, which I think will actually make
17 it a better looking station, a safer station, and
18 less of a --

19 MS. KING: The only residential property
20 that is contiguous to yours is above that public
21 alley?

22 MR. BROWN: There is a small apartment
23 building here. The alley is here.

24 MS. KING: And then the rest of the
25 surrounding is commercial?

26 MR. BROWN: Commercial is here and there

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1 is not much right back here. It is vacant. And
2 then on the other side of Park Road here is the
3 commercial building that comes from back --

4 MS. KING: Commercial or residential?

5 MR. BROWN: Commercial.

6 MS. KING: Commercial. So you've got
7 that heavy -- you've got that lawn and the heavy
8 tree screening and so forth between yourself and the
9 only residential property?

10 MR. BROWN: And there is a fence here
11 too that is existing that will be supplemented.
12 Some of the trees are already here and some will be
13 added. Things like the pay phone here will be
14 removed because that is a source of loitering that
15 isn't needed. A dumpster here now will be removed
16 and replaced with an enclosed trash area. Three
17 parking spaces, one, two, three, where there were
18 none now. All of them are accessible at all times,
19 even though the statute or the regs allow you to be
20 able to move cars. They will all be fully
21 accessible. You will have the six pumps here and
22 here. One thing -- when the plan was first proposed
23 and submitted, we were coming out about 24 feet from
24 the rear property line. One of the -- and we met
25 with the ANC and one of the issues was to try to --
26 while this was important, to minimize it to avoid

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1 any kind of nuisance area and also to kind of open
2 up the site a little further for circulation
3 purposes. So what we would request is that under
4 the regulations you could go back up to 10 feet from
5 the property line. We would like the flexibility to
6 go anywhere from where it is now to within 10 feet
7 of the boundary, again, to accommodate that.

8 MS. KING: Oh, I see. The ANC is
9 suggesting that off a public alley that an empty
10 space like that with trees and grass would be an
11 invitation to illicit activity.

12 MR. BROWN: Yes. Which unfortunately
13 there is some in this area. I think the lighting on
14 the canopy and then there are lights -- I am trying
15 to be brief -- but he lights here, here and here.
16 They are smaller than the existing ones and lower to
17 focus the light. To accomplish the same job without
18 having impacts off-site.

19 MS. KING: And I gather even though we
20 have nothing on the record from the ANC that you
21 have met with them and discussed this project with
22 them?

23 MR. BROWN: Yes, we did. We met the 7th
24 of -- no, a week ago today we met with them and made
25 a presentation and discussed some issues. While I
26 don't believe they have submitted anything, there

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1 was certainly no opposition and I think they were
2 pleased. Some of the things that were discussed
3 about the rear of the site, kind of tightening that
4 up, and the pay phone. One other item was just kind
5 of stretching it out and making it less prone to
6 congestion. I think we have accomplished that.

7 MS. KING: What ANC was it?

8 MR. BROWN: 1A.

9 MR. HOOD: Ms. King, I don't know what
10 the procedures are, but one of the commissioners is
11 on staff here. So I don't know -- I know that
12 through my community involvement.

13 MS. KING: One of the commissioners --

14 MR. HOOD: Commissioner Johns.

15 MR. BROWN: Yes. He is the treasurer of
16 ANC-1A.

17 MR. HOOD: So I don't know. He is the
18 commissioner, so all that can be verified.

19 MR. BROWN: We will be happy to have him
20 report. I thought it was a productive meeting that
21 we had.

22 MS. KING: Okay.

23 CHAIRPERSON REID: Have you --

24 MR. NYARKU: If I am allowed to do that
25 now --

26 CHAIRPERSON REID: To do what?

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1 MS. KING: He is an ANC Commissioner in
2 1A.

3 MR. NYARKU: I was at the ANC meeting.

4 CHAIRPERSON REID: Oh, I am sorry. I
5 was reading. You mean this gentleman? All right.
6 You can give us a brief summation.

7 MR. NYARKU: Can I do that?

8 CHAIRPERSON REID: Yes.

9 MR. NYARKU: Yes. I think ANC-1A
10 approved this application.

11 CHAIRPERSON REID: That is from a very
12 reliable source.

13 MR. NYARKU: Initially, I was --

14 MR. HOOD: But I do have concerns.

15 CHAIRPERSON REID: Mr. Hood?

16 MR. HOOD: On the application here, are
17 you doing away with the three bays?

18 MR. BROWN: Yes. The three bays will be
19 -- and the three bays are in the existing building
20 which will be demolished and replaced by the
21 security building.

22 MR. HOOD: So this is going to be a
23 self-service gas station? I mean, it won't have any
24 changing tires or anything?

25 MR. BROWN: That is correct.

26 MS. KING: Does the gas station advisory

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1 committee still exist? Do you have to go to them to
2 get permission to stop doing that?

3 MR. RACHAL: Ms. King, yes we do and we
4 will proceed to do that.

5 CHAIRPERSON REID: Is that with Office
6 of Planning?

7 MS. KING: No. It is under the -- it is
8 in the energy office and it is an advisory committee
9 that --

10 MR. RACHAL: And I would like to offer
11 the point that the advisory board exists by a
12 statute which has a sunset provision and there is a
13 bill pending in the council to extend that period.

14 MS. KING: I know. Bill Spalding
15 introduced that legislation and you know how long it
16 is since Bill has been on the City Council.

17 MR. RACHAL: Yes, that is right. But
18 there has been over the several years amendments to
19 the process and that whole procedure may be revised
20 as the council takes it up a second time.

21 MS. KING: This is presupposing that the
22 gas station advisory committee is going to say it is
23 okay for you to not do full service anymore, is that
24 correct?

25 MR. RACHAL: That is correct. In
26 accordance with the standards set forth in the

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1 statute.

2 MS. KING: Okay. So regardless of what
3 we do, you can't do that unless the gas station
4 advisory says that you can?

5 MR. RACHAL: That is correct.

6 MR. HOOD: I don't know -- I know it is
7 not in our jurisdiction, but it seems like all the
8 cases that are coming before us now are taking out
9 the service piece of gas stations. Let me ask
10 another question. What is the closest gas station
11 that has full service, where you can go in and get
12 service and change a tire and work on your car?

13 MR. BROWN: I believe it is a -- well,
14 there are some independent non-service station
15 repair facilities on Georgia Avenue, but I believe
16 there is a Texaco station two or three blocks north
17 on Georgia. I guess that would be -- yes, it would
18 be past where the Georgia Avenue Metro Station is
19 going to be. So it is two or three blocks. I
20 believe that is full service.

21 MR. HOOD: Will you still have a public
22 air pump?

23 MR. BROWN: Pardon?

24 MR. FALETTTO: Yes, we will.

25 MR. HOOD: Will you eventually serve
26 food in the Amoco station?

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1 MR. BROWN: It is limited by the nature
2 of that security building where there will be an
3 employee inside. The only thing they are going to
4 be able to sell there are prepackaged items -- a
5 coke, chips and things like that. Because there
6 will be no direct customer access to that building.
7 There is a foyer where you can stand out of the
8 elements and pay your money through one of the metal
9 boxes. So that there will be no fresh food. The
10 ANC suggested, and it was a good idea and already
11 Amoco policy, no drug paraphernalia -- no rolling
12 papers be sold there.

13 MS. KING: What a good idea.

14 MR. BROWN: Yes. So -- and that is easy
15 for Amoco to agree to. Very limited -- a pack of
16 cigarettes and gum. Something that somebody can
17 reach from a shelf that you can see from outside.

18 MS. KING: Or in a vending machine.

19 MR. BROWN: Pardon?

20 MS. KING: Or in a vending machine.

21 MR. BROWN: Except for there is going to
22 be no direct customer access. So that you would
23 have to point or say I would like a pack of
24 cigarettes or a coke.

25 MS. KING: Mr. Hood, this gas station
26 advisory committee was instituted about 20 -- more

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1 than 20 years ago because of the flight of full
2 service gas stations from the District. The
3 legislation has always had a sunset provision and it
4 has always been revived at the moment of its death.
5 And I guess probably the rules have changed since I
6 knew it in its early manifestation. But there is a
7 group that includes people from the government and I
8 believe from the community as well as from the gas
9 industry who argue about this question. It is a
10 matter of great concern that there are so -- it
11 isn't that every service station will also change
12 your oil and so forth any more.

13 MR. HOOD: Thank you, Ms. King, for
14 pointing that out.

15 MS. KING: There is an entity in the
16 District Government that looks after that.

17 MR. HOOD: Thank you.

18 CHAIRPERSON REID: All right. Any other
19 questions? There was no letter from the ANC. It
20 was submitted to the Office of Planning for review,
21 was it not?

22 MR. BROWN: It was submitted -- the
23 indication that my office was given by them was that
24 they were not in a position to respond. That they
25 were not going to respond to it.

26 CHAIRPERSON REID: All right. Persons

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1 and parties in support? Seeing none, opposition?
2 Seeing none, closing remarks by the applicant.

3 MR. BROWN: I think we have established
4 meeting the criteria. A bench decision and a
5 summary order would be greatly appreciated. Also,
6 just to remind you, because I think it does maintain
7 some flexibility, in the order making it subject to
8 the plans as Exhibit blank subject to the
9 flexibility we discussed on the rear yard where we
10 could go from where it is shown now to not less than
11 10 feet in the rear yard.

12 MS. KING: I so move.

13 MR. HOOD: Second.

14 CHAIRPERSON REID: Second, for all the
15 reasons given.

16 MS. PRUITT: Madam Chair, you have to
17 vote question. Since we do not have an official
18 letter from the ANC, so that is not given great
19 weight. I just wanted to clear that up for the
20 record.

21 MS. KING: That is right.

22 CHAIRPERSON REID: Right. Right.

23 MS. PRUITT: Because in a summary order,
24 we have to address that. And I just wanted to do
25 that.

26 CHAIRPERSON REID: Okay. All in favor?

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1 ALL BOARD MEMBERS: Aye.
2 CHAIRPERSON REID: Opposed?
3 MS. PRUITT: Motion made by Ms. King and
4 I believe seconded by Mr. Hood, 3 to 0 for approval.
5 CHAIRPERSON REID: Okay.
6 MR. BROWN: Thank you very much. Good
7 evening.
8 CHAIRPERSON REID: Thank you.
9 MS. KING: Good night.
10 (Whereupon, at 8:30 p.m., the public
11 hearing was concluded.)
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